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IN THE

Supreme Court of the United States

October Term, 1965

No. 904

A. C. KING, ET AL.,

Petitioners,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY, ET AL.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

ERNEST D. JACKSON, SR.
410 Broad Street, Suite 208
Jacksonville, Florida

RELEFORD McGRIFF
411 Broad Street
Jacksonville, Florida

Counsels for Petitioners

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1963
No.

A. C. KING, ET AL.,
Petitioners,
vs.
ATLANTIC COAST LINE RAILROAD COMPANY, ET AL.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioners pray that a writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above-entitled case on November 6, 1963.

Citations to Opinions Below

The opinion of the Circuit Court of Appeals, printed in Appendix at page 1a, is reported in 323 F.2d 1005. The opinion of the Circuit Court of Appeals (case no. 19317), printed in Appendix at page 3a, is reported in 303 F.2d 274.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on November 6, 1963. Ap. page 1a. Rehearing was denied on December 11, 1963. Ap. page 2a. The Jurisdiction of this Court is invoked under 28 U.S.C., Section 1254 (1).

QUESTIONS PRESENTED.

Whether a United States District Court has jurisdiction to hear complaints filed by a minority faction of a union alleging invidious discrimination by the union's majority and the railroad company acting in concert which resulted in the taking of jobs from the minority and giving them to the majority, notwithstand-

ing both groups have separate seniority rosters.

Whether a United States District Court can be deprived of its jurisdiction to hear a complaint filed by a minority faction of a union alleging invidious discrimination by the majority faction of a union and the railroad company acting in concert which resulted in the taking of jobs from the minority and giving them to the majority, by the union's filing of a petition involving the same matter but not all the complaining plaintiffs before the Railroad Adjustment Board some thirty (30) days after plaintiffs had filed their complaint in the United States District Court.

STATUTES INVOLVED

Jurisdiction in this suit exists under and by virtue of the provisions of Title 28, U.S.C., Secs. 1331 and 1337; 45 USC, Secs. 151 and 152 and 153, Title 28 USC, Section 2201; 28 USC, Section 1254(1).

28 USC §1254(1). Court of appeals-Certiorari-Appeal-Certified questions. — Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

28 USC §1331. Federal question-Amount in controversy. — The district courts shall have original jurisdiction of all civil actions wherein the mater in controversy exceeds the sum or value of $3,000, exclusive of interest and costs, and arises under the Constitution, laws or treaties of the United States. (June 25, 1948, c. 646, §1, 62 Stat. 930.)

28 USC §1337. Commerce and anti-trust regulations. — The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies. (June 25, 1948, c. 646, §1, 62 Stat. 931.)

28 USC §2201 — Creation of remedy — In a case of actual con-

troversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such. (June 25, 1948 c. 646, §1, 62 Stat. 964; May 24, 1949, c. 139, 111, 63 Stat. 105.)

STATEMENT OF CASE

On October 6, 1960, Appellants, Negro Carmen Helpers who are members of the Brotherhood Railway Carmen of America, a National Union and employee of the Atlantic Coast Line Railroad Company, instituted a class action against the defendant Atlantic Coast Line Railroad Company, a corporation doing business in the State of Florida and Georgia and the defendant, The Grand Lodge Brotherhood Railway Carmen of America, an unincorporated union association doing business in the State of Florida and Georgia, affiliated with the A.F. of L.-C.I.O., claiming that the defendants are guilty of hostile discrimination against the plaintiffs and those Carmen Helpers similarly situated in violation of plaintiffs' rights secured under the Railway Labor Act. 45 U.S.C. Section 151, 152 by the taking away of their jobs and giving their jobs to white employees designated as Car Inspectors (R-13).

On November 3, 1960, the Defendant, Atlantic Coast Line Railroad Company filed a Motion to Dismiss, attacking the jurisdiction of the District Court (R-36).

On November 16, 1960 the Defendant, Brotherhood of Railway Carmen of America filed a Motion to Dismisss, attacking the jurisdiction of the District Court. (R-37).

On August 9, 1961, the District Court entered a final Order granting both defendants' Motion to Dismiss and refused to grant plaintiffs the opportunity to file an Amended Complaint (R-39).

On September 5, 1961, plaintiffs filed their Notice of Appeal to this Court in the United States District Court, Southern District of Florida, Jacksonville Division (R-42).

On May 17, 1963, this Court affirmed the decision of the trial court but remanded the case to afford plaintiffs an opportunity to file an amended complaint.

On July 26, 1962, the trial court entered an Order granting leave to file Amended Complaint (R-1). (A.—6a)

On August 17, 1962, Plaintiffs' Amended Complaint was filed (R-3). (Ap. 7a)

On August 27, 1962, Defendant Atlantic Coast Line Railroad Company filed its Motion to Dismiss (R-21). (Ap. 21a)

On October 2, 1962, Defendant Brotherhood Railway Carmen of America filed an Alternative Motion To Dismiss or for Summary Judgment together with Exhibits (R-22-43): (Ap. 21a, 22a).

On December 4, 1962, the United States District Court entered its Summary Final Judgment (R-52). (Ap. 44a)

On January 3, 1963, Plaintiffs filed their Notice of Appeal (R-56). (Ap. 46a).

On November 6, 1963, the United States Court of Appeals affirmed the decision of the lower court (Ap. 1a).

On December 2, 1963, Plaintiffs filed a Petition for Rehearing.

On December 11, 1963, this Court entered an Order denying Petition for Rehearing. (Ap. 2a).

REASONS FOR GRANTING THE WRIT

1. It is apparent that the decision of the court below is in direct conflict with the principle of law followed by this court in *Steele v. Louisville & Nashville R. Co.*, 1944, 323 U.S. 192, 65 S.Ct. 226, 89 L.Ed. 173; *Tunstall v. Brotherhood of Locomotive Firemen and Enginemen*, 1944, 323 U.S. 210, 65 S.Ct. 235, 89 L.Ed. 187; *Graham v. Brotherhood of Firemen*, 1949, 338 U.S. 232, 70 S.Ct. 14, 94 L.Ed. 22; *Brotherhood of Railroad Trainmen v. Howard*, 1952, 343 U.S. 768, 72 S.Ct. 1022, 96 L.Ed. 1283; *Central of Georgia R. Co. v. Jones*, 229 F.2d. 648; A read-

ing of the cases upon which the lower court bottomed its decision will clearly show that there is an apparent conflict between the theory followed in the above cited cases and the theory applied in the lower court in this case. The decisions followed by the lower court did not involve the taking away of jobs from a minority faction of the union by the invidious discrimination of the majority, but instead involved the interpretation of a then existing work agreement, see *Slocum v. Delaware, Lackawanna & Western R. Co.*, 1950, 339 U.S. 239, 70 S. Ct. 577, 94 L.Ed. 795; *Order of Railroad Conductors v. Southern R. Co.*, 1950, 339 U.S. 255, 70 S.Ct. 585, 95 L.Ed. 811; and *Fingar v. Seaboard Air Line R. Co.*, 5 Cir., 1960, 277 F.2d 698, 700.

In order to clear up this apparent conflict over the jurisdiction of a United States District Court to entertain complaints of a minority faction of a union against alleged invidious discrimination by the majority faction of the union which result in the taking away of jobs from the minority faction, this Court must render a decision clearly defining the jurisdiction of a United States District Court to hear complaints of this nature, otherwise a large number of railroad employees will suffer irreparable injury.

2. The United States Court of Appeal for the Fifth Circuit has handed down conflicting decisions concerning exercise of a United States District Court's jurisdiction in controversies involving alleged illegal discrimination by majority factions against the minority factions of a union. *C. O. Bolt v. Joint Dining Car Employees*, et al, 301 F.2d 20.

The United States District Court and the United States Court of Appeals for the Fifth Circuit continue to rule that the Railway Labor Act, amended 45 USCA §153 deprives a United States District Court of exercising its jurisdiction involving disputes between employees, the bargaining agent and the Railroad Company until the exhaustion of all administrative remedies under the Railroad Labor Act, notwithstanding this Court's decision in *Moore v. Illinois*, 312 U.S. 630, *Brotherhood of Railroad Trainmen v. Howard*, 1953, 343 U.S. 768, 72 S.Ct. 1022, 96 L.Ed. 1283

3. The decision of the Court below is believed to be erroneous and conflicting not only with decisions of this Court, but also conflicting with the Circuit Court's original decision in this case (Ap-2a). The Court of Appeals said in its first opinion in this very same case rendered on May 17, 1962, while affirming the dismissal of the original complaint filed in this suit by the trial court:

> "The Court presumably concluded that, reading the detailed allegations of the complaint together with annexed exhibits, it was clear that, in contrast to general conclusory allegations of discriminatory unfair representation and practices, this was really a suit on, and a controversy over, the interpretation of the collective bargaining agreement. Under Slocum v. Delaware, Lackawanna & Western R. Co., 1950, 339 U.S. 239, 70 S.Ct. 577, 94 L.Ed. 795; Order of Railroad Conductors v. Southern R. Co., 1950, 339 U.S. 255, 70 S.Ct. 585, 95 L.Ed. 811; and Fingar v. Seaboard Air Line R. Co., 5 Cir., 1960, 277 F. 2d 698, 700, the exclusive jurisdiction would of course, be in the Railway Adjustment Board."

"While we think that this construction of the complaint was permissible and is therefore affirmed, we feel that the Court ought not to have expressly denied leave to amend the complaint. *All parties are in agreement that if a complaint properly sets forth the theory of illegal discrimination of a type similar* to *Steele v. Louisville & Nashville R. Co.*, 1944, 323 U.S. 192, 65 S.Ct. 226, 89 L.Ed. 173; *Tunstall v. Brotherhood of Locomotive Firemen and Enginemen*, 1944, 323 U.S. 210, 65 S. Ct., 235, 89 L.Ed. 187; *Graham v. Brotherhood of Firemen*, 1949, 338 U.S. 232, 70 S.Ct. 14, 94 L.Ed. 22; *Brotherhood of Railroad Trainmen v. Howard*, 1952, 343 U.S. 768, 72 S.Ct. 1022, 96 L.Ed. 1283; *Central of Georgia R. Co. v. Jones*, 229 F.2d. 648, cert. den. 352 U.S. 848, 77 S. Ct. 32, 1 L. Ed 2d 59, jurisdiction is properly in the Courts, rather than in the Railway Adjustment Board."

The Supreme Court of the United States speaking through Mr. Justice Black in its opinion rendered in Brotherhood of Rail-

road Trainmen v. Howard, 72 S. Ct. 1022, 343 U.S. 768 rule that the Railway Labor Act prohibits bargaining agent it authorizes from using their position and power to destroy colored workers' jobs in order to bestow them on white workers. This is the gist of the issue presented by the appellants in their complaint filed in the District Court, to-wit: Appellants' jobs were taken from them and given to white car inspectors as alleged in the complaint.

Mr. Justice Black further stated in the Howard opinion that "Courts can protect those threatened by such an unlawful use of power granted by a federal act.

"Here, as in the Steele case, colored workers must look to a judicial remedy to prevent the sacrifice of their rights under the Act. For no adequate administration remedy can be afforded by the National Railroad Adjustment or Mediation Board. The claims here cannot be resolved by interpretation of a bargaining agreement so as to give jurisdiction to the Adjustment Board under our holding in Slocum v. Delaware L&W. R. Co., 339 U.S. 239, 70 S.Ct. 577, 94 L.Ed. 795."

The Supreme Court in *Conley v. Gibson*, 78 S. Ct. 99, 355 U.S. 41, followed its ruling in *Trainmen v. Howard*, and for saidreason the Order of Dismissal by the District Court and affirmed by the United States Court of Appeals on the grounds that the appellants did not exhaust remedies under the Railway Labor Act, was error and should have been reversed.

If a complaint properly sets forth the theory of illegal discrimination based on a general allegation of hostile discrimination by the majority faction of a union which resulted in the taking away of jobs performed by the minority group and giving such jobs to the majority group over the objection of the minority group, the complaint is sufficient to invoke the jurisdiction of a United States District Court under the Railway Labor Act.

While the trial Judge in the Summary Final Judgment entered by the trial court on December 4, 1962 talks about there being no genuine issue of hostile discrimination charged against the defendant union raised by counter affidavit, this case was in

fact dismissed by the trial Judge on the second ground of defendants' Motion to Dismiss, to-wit: Alternative Motion To Dismiss or For Summary Judgment (Ap-22a).

Paragraph 2— "The Court lacks jurisdiction of the subject matter, exclusive jurisdiction of the dispute described in the Complaint being vested in the National Railroad Adjustment Board under the provisions of Section 3 First (i) of the Railway Adjustment Act. (48 Stat. 1191, 45 U.S.C., Sec. 153 First (ii).

The Trial Judge in the Summary Final Judgment ruled (Ap-44a):

2. "The alternative motion of the Defendant Union for summary judgment, in which the Defendant Railroad has joined, is granted upon the second ground thereof, namely that this Court lacks jurisdiction of the subject matter."

The same trial judge in his first Order of Dismissing the original complaint ruled (Ap-32a):

3. "Since exclusive jurisdiction of the dispute described in the Complaint is vested in the National Railroad Adjustment Board, involving as it does a dispute growing out of the interpretation or application of agreements concerning "rates of pay, rules on working conditions" (Section 3 First (i) of the Railway Labor Act (45 U.S.C. Sec. 153 First (if), 48 Stat. 1191).

Because of the trial Court's ruling as cited above which was affirmed by the United States Court of Appeals, it is the position of Petitioners that the Summary Final Judgment entered by the trial judge and affirmed by the Circuit Court of Appeals is erroneous and in conflict with the United States Court of Appeal own prior decision rendered herein, as well as the applicable laws upheld by the U.S. Supreme Court in *Brotherhood of Railroad Trainmen v. Howard*, 72 S.Ct. 1022, 343 U.S. 768, and for said reason should be reversed.

As to the Court's statement that there was no issue of hostile discrimination charged against the Union because the Union filed a claim before the National Railroad Adjustment Board, Peti-

tioners took the position before the trial court, the Circuit Court and before this court that the hostile discrimination complained of by plaintiffs against the Union was not that the Union would not take their claim before the Board, but that the majority faction which controlled the Union was taking jobs that belong to the minority faction and that the Union as the legal representative was not fairly protecting the jobs of the minority. (Ap 8a, 9a) paragraphs VI and VII of the Complaint. Paragraph XII of the Complaint allege the specific acts of taking jobs from plaintiffs and giving them to Carmen who constitute the majority faction of the Union (Ap- 12a, 13a). Both defendants having joined in the Alternative Motion To Dismiss or For Summary Judgment admit that work formerly performed by the plaintiffs has been assigned to Carmen (Ap 22a). Both defendants admit that car oiling and packing has been done by Carmen Helpers on the property involved some forty (40) years or more (Ap- 26a; 28a).

Petitioners have consistently taken the position that their right to continue to perform the job of car oiling and packing would not be fully adjudicated before the National Railroad Adjustment Board because it was not a mere question of interpreting the contract, but a question as to whether the Union could without the agreement of the minority permit the majority to take away the jobs of the minority without making any arrangements for their welfare or reassignments.

The final award of the National Railroad Adjustment Board apparently sustain the position of Appellants which is as follows: (Letter from General Chairman, Carmen, dated May 29, 1963)

JOINT PROTECTIVE BOARD

ATLANTIC COAST LINE

AND GEORGIA RAILROADS

Florence, S.C.
May 29, 1963

TO ALL LOCAL CHAIRMEN

Atlantic Coast Line Railroad

Dear Sirs and Brothers:

I regret to advise that the National Railroad Adjustment Board in Award No. 4110 has denied our claim in behalf of Carmen Helpers from Florence, S. C. and Waycross, Ga. who were removed from service and supplanted by carmen.

I am attaching hereto advance copy of this Award, the usual printed copies will be forwarded to you as soon as they are received by this office.

The Board has not as yet made a decision on Docket No. 4026 which includes a similar claim in behalf of Carmen Helpers at Tampa, Jacksonville, Savannah, High Springs, Sanford, Rocky Mount and Lakeland, but since these claims are identical it is assumed that the Board's decision will be the same.

With kind personal regards, I am

Fraternally yours,
J. S. HEAD,
General Chairman, Carmen.

/SH/nh

DISSENT OF LABOR MEMBERS TO AWARD NO. 4110

An award is only as good as the reasoning upon which it is based. There is no reason given for the present negative award except so-called precedent awards. Unfortunately those awards, and likewise the instant award, ignored the primary function of the Adjustment Board, namely to adjust disputes in accordance with the terms of the agreement existing between the parties to said dispute. Upholding the carrier in its unilateral change in the working conditions set forth in the governing agreement is repugnant to the purposes and command of the Railway Labor Act and constitutes an encroachment into the field of collective bargaining. The Division should have held that the carrier's failure to give notice of the desired instant change and negotiate in reference thereto with the statutory representative, as provided by the Railway Labor Act, left the collective agreement in force and required an affirmative award. See Order of Railway Tele and required an affirmative award. See Order of Railway Tele graphers vs. Railway Express Agency, 64 S.Ct. 582.

s/ C. E. Bagwell
s/ T. E. Losey
s/ E. J. McDermott
s/ R. E. Stenzinger
s/ James B. Uink

CONCLUSION

It is unmistakably clear from the above cited award by the National Railroad Adjustment Board that the Court was in error to require plaintiffs to submit their claim to an Adjustment Board that had neither the jurisdiction or authority to fully rule on all the issues raised by Plaintiffs in their complaint and for said reason it is the position of Petitioners that the Summary Final Judgment entered by the Trial Court on December 4, 1962 and affirmed by the United States Court of Appeals in its opinion dated November 6, 1963 (Ap. 1a) is erroneous and unless the court grant petitioners' Writ, not only these petitioners but many more minority factions employed in this Nation's Railroad Industry will be deprived of their jobs without there being a proper forum, having sufficient jurisdiction to determine the validity of their complaint, to which they may appeal.

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully Submitted,

ERNEST D. JACKSON, SR.
(Ernest D. Jackson, Sr.),
410 Broad Street, Suite 208
Jacksonville, Florida

RELEFORD McGRIFF,
(Releford McGriff),
411 Broad Street
Jacksonville, Florida

Counsels for Petitioners

I DO HEREBY CERTIFY that on this 9th day of March, A.D. 1964, I mailed a true and correct copy of the foregoing Petition for Writ of Certiorari to the Attorneys for Respondents, by placing the same in a properly addressed envelope, with sufficient postage thereon and depositing the same in the United States mail.

ERNEST D. JACKSON, SR.
410 Broad Street, Suite 208
Jacksonville, Florida

RELEFORD McGRIFF
411 Broad Street.
Jacksonville, Florida

By Ernest D. Jackson
Counsels for Petitioners

APPENDIX

OPINIONS OF COURTS BELOW

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

A. C. KING, et al, *Appellants*,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY, et al, *Appellees*.

No. 20299.

November 6, 1963

Ernest D. Jackson, Sr., Jacksonville, Florida, for Appellants.

William H. Adams, III, Jacksonville, Florida, Richard R. Lyman, Toledo, Ohio, William M. Maness, Jacksonville, Florida, for Appellees.

Before TUTTLE, Chief Judge, and JONES and BELL, Circuit Judges.

PER CURIAM: The appellants, who were employees of the appellee Railroad Company, brought a suit against the Railroad and a Union, of which the appellants were members, claiming that the Railroad and the Union had unlawfully abolished their jobs. The district court denied relief and this Court affirmed *Britton v. Atlantic Coast Line Railroad Company*, 5th Cir. 1962, 303 F.2d 274. In remanding to the district court, this Court authorized the filing of an amended complaint. The amended complaint was filed. Motions for summary judgment were made by the Railroad and the Union. The district court granted summary judgment against the appellants, holding, as it and this Court had held on the former appeal, that exclusive jurisdiction was in the Railway Adjustment Board. We see no difference between the factual situation under the original complaint and that which is before us on this appeal as would call for a different result than was reached when the cause was before us earlier. The judgment of the district court is

AFFIRMED.

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

December 11, 1963

Re: No. 20299-A C. King, ET A
v. Atlantic Coast Line Railroad
Company, ET AL

Gentlemen:

You are hereby advised that the Court has today enter
an order denying the Petition for Rehearing in the above ca
No opinion was rendered in connection therewith.

Very truly yours,

EDWARD W. WADSWORT
Clerk

Mr. Ernest D. Jackson, Sr.
Attorney at Law
Jacksonville, Florida

Mr. William H. Adams, III
Attorney at Law
Jacksonville, Florida

Mr. Richard R. Lyman
Attorney at Law
Toledo 4, Ohio

Mr. William M. Maness
Attorney at Law
Jacksonville, Florida

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 19317

GEORGE BRITTON, et al., *Appellants,*

versus

ATLANTIC COAST LINE RAILROAD COMPANY and THE GRAND LODGE BROTHERHOOD RAILWAY CARMEN OF AMERICA,

Appellees.

Appeal from the United States District Court for the Southern District of Florida.

(May 17, 1962)

Before BROWN, WISDOM and BELL, Circuit Judges.

PER CURIAM: This was a complaint brought by or on behalf of certain Negro railroad workers seeking relief against the Brotherhood Railway Carmen of America, of which they are members, and the Railroad for allegedly abolishing certain jobs previously performed by them and wrongfully assigning similar work to others. The District Court dismissed the complaint on the ground that the Court was without jurisdiction since exclusive jurisdiction was in the Railway Adjustment Board. The Court presumably concluded that, reading the detailed allegations of the complaint together with annexed exhibits, it was clear that, in contrast to general conclusory allegations of discriminatory unfair representation and practices, this was really a suit on, and a controversy over, the interpretation of the col-

lective bargaining agreement. Under Slocum v. Delaware, Lackawanna & Western R. Co., 1950, 339 U.S. 239, 70 S. Ct. 577, 94 L. Ed. 795; Order of Railroad Conductors v. Southern R. Co., 1950, 339 U.S. 255, 70 S. Ct. 585, 94 L.Ed. 811; and Fingar v. Seaboard Air Line R. Co., 5 Cir., 1960, 277 F.2d 698, 700, the exclusive jurisdiction would of course, be in the Railway Adjustment Board.

While we think that this construction of the complaint was permissible and is therefore affirmed, we feel that the Court ought not to have expressly denied leave to amend the complaint. All parties are in agreement that if a complaint properly sets forth the theory of illegal discrimination of a type similar to Steele v. Louisville & Nashville R. Co., 1944, 323 U.S. 192, 65 S. Ct. 226, 89 L. Ed. 173; Tunstall v. Brotherhood of Locomotive Firemen and Enginemen, 1944, 323 U.S. 210, 65 S. Ct. 235, 89 L.Ed. 187; Graham v. Brotherhood of Firemen, 1949, 338 U. S. 232, 70 S. Ct. 14, 94 L.Ed. 22; Brotherhood of Railroad Trainmen v. Howard, 1952, 343 U. S. 768, 72 S. Ct. 1022, 96 L.Ed. 1283; Central of Georgia R. Co. v. Jones, 229 F. 2d 648, cert. den. 352 U.S. 848, 77 S. Ct. 32, 1 L.Ed. 2d 59, jurisdiction is properly in the Courts, rather than in the Railway Adjustment Board. Since an outright affirmance of the judgment might subject the parties to a plea of res judicata on the merits or as to jurisdiction, or both, we think that the plaintiff should be afforded an opportunity of filing whatever amended complaint they properly can. The cause is therefore remanded for such further and consistent proceedings.

AFFIRMED AND REMANDED.

ORDER GRANTING LEAVE TO AMEND COMPLAINT

Filed Jul. 26, 1962

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA, JACKSONVILLE DIVISION.

No. 4576-Civil-J

GEORGE BRITTON, NATHANIEL COOPER, WILLIAM LEAPHART, JOHNNIE BARNES, J. A. BRADLEY, CURTIS HILL, JOSEPH YOUNG, and CURTIS JACKSON, all Plaintiffs being Carmen Helpers employed by the Atlantic Coast Line Railroad Company,

Plaintiffs,

versus

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation doing business in the State of Florida and Georgia; THE GRAND LODGE BROTHERHOOD RAILWAY CARMEN OF AMERICA, an unincorporated union association doing business in the State of Florida and Georgia and affiliated with the A. F. of L.-C.I.O.

Defendents.

On August 9, 1961 this Court entered an order dismissing the complaint in this cause, with prejudice, and without leave to amend on the ground of lack of jurisdiction over the subject matter. The United States Court of Appeals for the Fifth Circuit affirmed this dismissal but held that the plaintiffs should have been granted leave to amend their complaint in order to show that this Court did have jurisdiction in this matter.

In accord with the Mandate from the Court of Appeals, filed herein on July 18, 1962, it is

Ordered:

1. This cause, Number 4576 Civil-J, is reopened and the Court's Order of August 9, 1961 dismissing the cause, with prejudice, is amended to allow plaintiffs to file an amended complaint alleging facts showing that this Court has jurisdiction in this matter.

2. Plaintiffs shall have thirty (30) days from the entry of this Order in which to file their amended complaint. If an amended complaint is not filed within this period the Order of August 9, 1961 will be reinstated in its entirety.

Done and Ordered in Chambers, at Jacksonville this 26th day of July, 1962.

BRYAN SIMPSON,
Chief Judge

Ernest D. Jackson, Sr., Esquire,
410 Broad Street,
Jacksonville 2, Florida.

Messrs. Kurz, Toole & Martin,
704 Florida Theatre Building,
Jacksonville 2, Florida.

Messrs. Botts, Mahoney, Whitehead, Ramsaur & Hadlow,
1712 Barnett National Bank Building
Jacksonville 2, Florida.

Messrs. Mulholland, Robie & Hickie,
740 National Bank Building
Toledo 4, Ohio.

AMENDED COMPLAINT

Filed Aug. 17, 1962

(Title Omitted)

Plaintiffs are citizens of the State of Georgia; the Defendant Atlantic Coast Line Railroad Company is a Corporation having one of its principal offices in Jacksonville, Duval County, Florida, and is engaged in business within both the State of Florida and Georgia and has officers and agents within the State of Florida; The Defendant, Brotherhood Railway Carmen of America is a national unincorporated union association having its principal office and place of business in Kansas City, Missouri but is engaged in business within the State of Florida and has officers and agents in said state; that the amount in controversy exceeds Ten Thousand Dollars ($10,000.00) exclusive of interest and cost.

II.

Jurisdiction in this suit exists under and by virtue of the provisions of Title 28, USC, Secs. 1331 and 1337; 45 USC, Secs. 151 and 152; Title 28 USC, Sec. 2201.

III.

The Defendant Brotherhood Railway Carmen of America hereinafter referred to as the "Brotherhood" is a national unincorporated association whose membership is derived principally from Carmen and Carmen Helpers employed on interstate railroads including the Defendant, Atlantic Coast Line Railroad Company, hereinafter referred to as the "Railroad." It is composed of a Grand Lodge and a number of subordinate lodges called Local Lodges and Joint Protective Boards which are so numerous as to make it impracticable to bring them all before the Court. The subordinate lodges are unincorporated associations each composed of numerous individuals employed as Carmen and Carmen Helper Craft and it is likewise impracticable to bring them all before the Court. The National Officers of the Brotherhood are elected by the delegates of the subordinate lodges, who by law or custom must be a Carmen, assembled in convention meeting. The Brotherhood has a common national treasury derived from membership dues and other sources.

IV.

The Brotherhood has been designated by the Carmen and Carmen Helpers of said Railroad to act for them as their bargaining agent pursuant to Section 2 of the Railway Labor Act, 45 U.S.C. Secs. 151-152, and said Brotherhood is the sole and exclusive bargaining agent for said railroad employees. The Brotherhood has negotiated on behalf of plaintiffs and all other Carmen Helpers and Carmen on said railroad a contract with the Railroad with respect to pay, working conditions, seniority and other allied matters which contract is now in full force and effect.

V.

This suit is brought on behalf of Plaintiffs as Carmen Helpers and on behalf of all Carmen Helpers similarly situated now employed by the Defendant Railroad and represented by the Defendant Brotherhood as their exclusive bargaining agent, operating through system Federation No. 42, Railway Employees Department, A.F. of L.-C.I.O.

Page

VI.

The Plaintiffs are a minority faction in the union and is composed of a large majority of Negroes and a lesser number of white. That as such a minority faction in the union, the plaintiffs have been subjected to the hostile discrimination of the majority faction of the union, and the majority faction make up the entire number of representatives within the union as well as those representatives for the union who negotiate with the Defendant carrier.

For the reasons stated herein it would be impracticable and a waste of time, all of which would go to nought, to attempt to pursue this matter through the organizational structure of the union, and for said reasons there are no administrative remedies within the union that could grant plantiffs the entire relief sought for in this complaint.

VII.

Plaintiffs are not asking or seeking this Court's interpretation of any contract existing now or existing heretobefore between the carrier and the employees, but instead is requesting this Court to require the defendant union to fairly and adequately defend their jobs so as not to subject them to the hostile discrimination of the majority faction of the union, and to enjoin the defendant carrier from agreeing and cooperating with the hostile discrimination pursued by the majority faction toward the plaintiffs who are the minority faction by taking away their jobs and giving them to members of the majority faction of the union. That the matters involved herein have been presented to the highest operating officer of the carrier and the relief prayed for has been denied by the carrier. The defendant union has also told the plaintiffs that there is no relief for their contentions.

For the reasons stated herein, plaintiffs have exhausted all administrative remedies available to them under the Railway Labor Act and are compelled to invoke the jurisdiction of this Court in order to protect their rights secured to them under the Railway Labor Act.

VIII.

Prior to 1940, the Carmen and the Carmen Helpers were included on the same seniority roster. Subsequent to 1940, the Carmen Helpers were placed on a separate seniority roster. The Carmen and the Carmen Helpers worked under the same work rules and their work tended to overlap at various points on the line, however, in the shops their work was more distinctly defined. The work divisions were confused further by permitting the individual to work one day at a Helper's job and another day at a Mechanic's job; nevertheless, the classification of work itself would determine the rate of pay the individual worker was entitled to receive. A Carmen Helper's rate of pay was paid for doing Car Packing and Oiling on the yard.

(b) The 1917 Agreement known as the Southeastern Agreement apparently made no distinction in the job classification of work done by Carmen, and for said reason, the word "Carmen" had no technical distinction as to specific work classification for Carmen as opposed to Carmen Helper's work as recognized in the National Agreement Negotiated and which became effective on September 20, 1919. Prior to 1919 all other crafts had Helpers which would indicate there was a classification distinction of work within each craft; however, in 1917, the National Agreement set up a classification of work rules within the Carmen craft; the Carmen Helper being assigned to do work designated by Rule 156, which is substantially the same as Rule 401 of the present contract.

(c) As far back as 1919, under the National Agreement, the Carmen Inspector did not perform the duty of repairing safety appliances or making light running repairs or oiling and packing boxes. The National Agreement of 1919 provided as follows:

"Rule 161. Men assigned to follow inspectors in yards to make safety appliance and light running repairs shall not be required to work on cars taken from trains to repair tracts."

(d) History reveals that the Carmen Inspector is in a different classification from the regular Carmen Mechanic. This distinction has persisted up until this very day. The defendants are now demonstrating this distinction by trying to demand, at present Carmen to pass the Inspector's examination as illustrated by Plaintiffs Exhibit "D" attached to the original complaint and expressly made a part of this complaint.

(e) The classification of work assigned to Carmen as distinguished from the work assigned to Carmen Helper was based more or less on a differential rate of pay for certain types of work, rather than the classification of the individual worker. The lowest rate of pay was paid for the heaviest, dirtiest, and most back-breaking job in the Carmen craft. Negroes were generally assigned to do this type of work in the Carmen craft. Oiling and packing boxes was one of these dirty, heavy, back-

breaking jobs. The Carmen, for a higher rate of pay, was generally assigned the lighter and more technical work except the job of truck building and draft gear work which Negro Carmen were generally assigned to do.

(f) In every agreement and contract since 1919, negotiated between the employees of the Carmen craft and the Defendant Railroad Company, the job of oiling and packing boxes has been work contracted for the Carmen Helper and no work contracted for the Carmen or the Carmen Inspector. The Agreement for Carmen Helper between the Atlantic Coast Line Railroad Company and Employees of the Mechanical Department, represented by the Shopmen's Association, effective December 1, 1935 provides as follows:

(Rules 29, Section F, Page 22.)

"Carmen Helpers work shall be to assist the Carmen and apprentices, or be car oilers and packers."

The present contract provides as follows:

"Rule 404 Revised, effective September 15, 1943.

Carmen Helpers.

Helper's work shall be to assist the Carmen and apprentices, and to do car oiling and box packing."

IX.

Plaintiffs allege that they are being deprived of their property rights by the defendants, to-wit: fair and equal representation in the protection of their jobs, wages and seniority rights acquired pursuant to Rule 12-F, Page 17, and Rule 404, Page 50, as clearly stated in their present contract with the Railroad.

X.

That while plaintiffs are members of the Defendant Grand Lodge, Brotherhood Railway Carmen of America as Carmen Helpers, they are denied the right to serve as a delegate or representative in any official capacity. Most of the plaintiffs are Negroes and because of their race and color they are denied the right to join Local Lodge No. 508, a lodge composed of only White employees, and are forced to join Florida Lodge No. 690,

a lodge composed of only Colored employees. That Negroes under the old Constitution of the Brotherhood were required to join separate lodges which were represented in the Joint Protective Boards and Conventions by delegates from the nearest white local lodge under the present and revised 1958 Constitution of the Brotherhood, the Colored lodges are given representation in the Joint Protective Board, but the local chairman of the White lodge has continued up to this date to be the local representative to handle all working conditions and grievances involving the carrier and the Colored employees; notwithstanding the Negro lodge has its own local chairman. Since the chartering of the Negro local lodge plaintiffs have had to pay a per capa fee to the White Local Lodge No. 508 for being represented by the Local Chairman of the White Local Lodge.

XI.

Even the representation given to the Negro Lodge has been limited to the Negro Carmen and the white lodge to White Carmen. The Carmen Helper, white or colored, has no vote which he has as a Carmen Helper can cast in any stage of the collective bargaining process affecting his work rate of pay, or working condition; except voting for the General Chairman who must be a Carmen. The Carmen Helper is placed in the awkward position of having work contracted for under a separate seniority roster, which by nature is closely connected and akin to the work of the Carman; yet, he has no representation except by the Carmen craft.

XII.

Both defendants are guilty of engaging in hostile discrimination against the plaintiffs as illustrated below:

(a) The Defendant Atlantic Coast Line Railroad Company posted three bulletins, to-wit: Bulletin No. 239, dated August 5, 1960; No. 240, dated August 4, 1960; and No. 241, dated August 4, 1960 all of which are attached to the original complaint as Plaintiffs' Exhibit "F", "G" and "H" respectively.

(b) Bulletin No. 239, dated August 5, 1960 as Plaintiffs Exhibit "F" purported to reduce the force of helpers which

resulted in cutting off some of the Plaintiffs and removing the other Plaintiffs and those similarly situated from doing the work of oiling and packing boxes in the yard.

(c) Bulletin No. 240, although dated prior to Bulletin No. 239 increased the force of Inspectors to be assigned to the same shift and assigned to do the same work then being done by the plaintiffs, to-wit: car oiling and packing.

(d) Bulletin No. 241, although dated prior to Bulletin No. 239, also abolished the job of two white Inspectors and assigned them to doing work that was then being done by the colored Carmen Helpers who are plaintiffs in this case.

XIII.

Car oiling and box packing has been done by Carmen Helpers employed by the Defendant Atlantic Coast Line Railroad Company for more than 40 years, a fact known by the Railroad and some of the plaintiffs as shown by the early work agreements filed herein.

XIV.

That the Defendant brotherhood has permitted Carmen to be employed by the Defendant Railroad to do car oiling and box packing in the Waycross yard, and in various other Railroad yards at other points on the line. That plaintiffs objected to this action taken by the Defendants Railroad Company and acquiesced in by the Defendant Brotherhood. That on August 2, 1960, plaintiffs through Local Chairman of Lodge No. 690, requested the Local Chairman of Waycross Lodge No. 508, pursuant to custom, to protest Bulletins Nos. 239 and 240 (Plaintiffs' Exhibits "F" and "G" respectively). That on August 11, 1960 Mr. E. L. Spicer, Master Mechanic of the Waycross, Georgia Yard, rejected the protest as a violation of Rule 404, in the following language:

"Rules 404 does not give car oiler and packers exclusive rights to this work, and as there is no violation to the current agreement, your request is declined."

On August 17, 1960, the Local Chairman, J. W. Hughes, turned the matter over to J. S. Head as the General Chairman

of the Joint Protective Board. That more than thirty (30) days have passed since this matter was presented to the company and as of this date, the matter has not been settled. The Defendant Railroad Company has continued to replace Carmen Helpers with Carmen.

XV.

That the action and threatened action of the Defendant Railroad and acquiesced in by the Defendant Brotherhood would have the direct effect of depriving plaintiffs and those similarly situated as Carmen Helpers of regular jobs and greatly reduce their earnings; that the taking away of the job of all oiling and packing on the yard and having them performed by Carmen will displace forever jobs contracted for Carmen Helpers for which plaintiffs hold seniority rights and in which they have vested contractual interests. Plaintiffs will sustain permanent and irreparable injury unless the Defendant Railroad Company and the Defendant Brotherhood are enjoined from violating plaintiffs' rights under the Railway Labor Act (45 USC Sec. 151, et seq.).

XVI.

The action taken and threatened herein by the Defendant Railroad and acquisced in by the Defendant Brotherhood is a violation of the duty imposed by the Railroad Labor Act (45 USC, Secs. 151 and 152). That the entire class of Carmen Helpers as a minority is being subjected to the hostile discrimination of the majority faction of the Brotherhood and the Defendant Railroad is being permitted to arbitrarily break its contract with plaintiffs. That not only has the company taken the job of oiling and packing away from the Carmen Helpers and assigned it to Carmen, the Railroad, with the acquiescence of the Defendant Brotherhood has launched upon a plan of taking jobs that were heretobefore contracted under Rule 40 for the Carmen Helper and performed by Carmen Helpers within the shop over an extended period of time, to-wit: viz: [illegible] holding on rivets, cleaning journals and assigning

said work to Carmen. That Defendant Railroad is threatening to continue furloughing Carmen Helpers and assigning their work to Carmen, the result of which will eventually eliminate the entire Carmen Helpers class which in effect will mean the removal of a few White and a huge number of Negro Carmen Helpers from the Railroad industry on this line throughout the South."

XVII.

The action of the Defendant Railroad Company, acquiesced in by the Defendant Brotherhood, arbitrarily violates plaintiffs' contractual rights with the Defendant Railroad as well as violates plaintiffs' rights secured to them under the Constitution and By-Laws of the Brotherhood and under the Railway Labor Act. The action aforesaid represents a complete breakdown in the ordinary processes of collective bargaining between the Brotherhood and the Railroad; that such action is a complete breach of the fiduciary duty resting upon the Brotherhood and its officers and agents to treat the members of the organization fairly and impartially and in accordance with the Railway Labor Act; that if such unlawful and unfair action is permitted it cannot fail to lead to a disruption of the ordinary flow of interstate commerce; that such action is an unfair, arbitrary, unauthorized and unlawful act of favoritism by the defendants over the Carmen Helpers, and the plaintiffs in particular.

XVIII.

That the plaintiffs, for the reasons stated herein, have no adequate remedy within the framework of the Brotherhood; that they have no administrative relief available to them under the Railway Labor Act and are therefore without remedy except in a Court of equity. Unless this Court grants relief they will be without adequate remedy and will continue to suffer irreparable and incalculable injury.

Wherefore, Plaintiffs pray:

1. That this Court take jurisdiction of the parties and the subject herein involved.

2. That proper process issue and be served upon the defendants requiring them to appear and answer this complaint.

3. That a preliminary injuction, pending the final judgment of this action against the Defendant Railroad, its officers, agents and employees be granted by order of this Court enjoining and restraining it and each of them from discharging plaintiffs and all Carmen Helpers similarly situated from performing the work of oiling and packing in the yards throughout the system where said work was being performed by Carmen Helpers on or before August 1, 1960.

4. That a preliminary injunction pending the final judgment in this action against the Defendant Railroad, its officers, agents and employees and the Defendant Brotherhood, its officers, agents and members, be granted by order of this Court, enjoining and restraining them from permitting and assigning Carmen and the employees of any other craft except Carmen Helpers to perform the work of oiling and packing on the Waycross Georgia Train Yards and all other yards throughout the system who were not assigned to do oiling and packing prior to August 1, 1960.

5. That at the hearing a perpetual injunction against the Defendant Railroad, its officers, agents and employees, and the Brotherhood, its officers, agents and members, be granted by order of this Court enjoining and restraining them and each of them from assigning and permitting Carmen and/or employees of any other craft except Carmen Helpers to perform the work of oiling and packing on the Waycross Yard and all other yards located on various other points throughout the system.

6. That at the hearing a perpetual injunction against the Defendant Railroad, its officers, agents and employees and the Defendant Brotherhood, its officers, agents and members be granted by order of this Court enjoining and restraining them and each of them from assigning and permitting any Carmen or the employees of any other craft except the Carmen Helpers

from performing the work of oiling and packing etc. and any other work contracted with the Defendant Railroad to be performed by Carmen Helpers under Rule 401 of the present contract effective September 15, 1945.

That the plaintiffs be awarded as damages an amount equal to their loss of wages against the defendant union and granted such further relief as may be proper under the circumstances.

ERNEST D. JACKSON, SR.,
(Ernest D. Jackson, Sr),
Attorney for Plaintiffs.

410 Broad Street, Suite #208,
Jacksonville, Florida.

Affidavit.

State of Florida,
County of Duval, ss.

On this day personally appeared before me, the undersigned officer duly authorized to administer oaths and take acknowledgments, the undersigned persons, who, after being first duly sworn by me according to law, upon their oath, depose and say: That they have read the Amended Bill of Complaint and understand the facts stated therein, and know of their own knowledge that the facts stated therein are true and correct, and those they do not know personally to be a fact, they have reason to believe that they are true and correct.

C. C. KING,
W. J. McLENDON,
M. W. CREWS,
J. D. LUNDY,
M. R. (Illegible),
NATHANIEL COOPER,
C. G. CALLAHAN,
E. D. WILLIAMS, JR.
(illigeble),
GEORGE COBB, SR.,
N. L. DAVIS,
J. M. BURKETT,

KELLY BURKETT.
(illigeble),
CURTIS JACKSON.

Sworn to and subscribed before me this 16th day of August A.D. 1962.

EARLENE WADE
Notary Public, State of
Florida at Large.

(Seal)

My Commission Expires Aug. 17, 1965.

Affidavit.

State of Florida,
County of Duval, ss.

On this day personally appeared before me, the undersigned officer duly authorized to administer oaths and take acknowledgments, the undersigned persons, who, after being first duly sworn by me according to law, upon their oath, depose and say: That they have read the Amended Bill of complaint and undersand its contents stated therein, and know of their own knowledge that the facts stated therein are true and correct, and those they do not know personally to be a fact, they have reason to believe that they are true and correct.

J. C. HILLIARD.
CHARLIE WHITEHOST.
J. L. BETHEA.
J. M. WHITEHURST.
ULYSSES DAVIS.
THOMAS DAVIS.
J. W. ROBERSON.
LEROY McMILLAN.
L. DAVIS.
W. H. MARYLAND.
PAUL ROBERTS.
FRANK THOMAS.
(illigeble).

NED WORLEY,
J. L. BONNER,
LOREN J. BATTLE,
FRANK SUMNER,
J. M. WILLIAMS.

Sworn to and subscribed before me this 16th day of August, A. D. 1962.

EARLENE WADE,
Notary Public, State of Florida at Large.

(Seal)

My Commission Expires Aug. 17, 1965.

Affidavit.

State of Florida,

County of Duval, ss.

On this day personally appeared before me, the undersigned officer duly authorized to administer oaths and take acknowledgments, the undersigned persons, who, after being first duly sworn by me according to law, upon their oath depose and says: That they have read the Amended Bill of Complaint and understands its contents stated therein, and know of their own knowledge that the facts stated therein are true and correct, and those they do not know personally to be a fact, they have reason to believe that they are true and correct.

A. L. HEMINGWAY,
WILLIE A. WILSON,
C. MYERS,
H. S. ADDISON,
J. PERRY,
J. SCOTT,
A. WILDS,
T. H. STACKLEY,
F. SUMNER,
R. CAIN,
L. BATTLE.

N. SMALLS.
O. WALKER.
J. ECHOLS.

Sworn to and subscribed before me this 16th day of August, A.D. 1962.

EARLENE WADE
Notary Public, State of Florida
at Large

(Seal)

My Commission Expires Aug. 17, 1965.

Affidavit.

State of Florida,
County of Duval, ss.

On this day personally appeared before me, the undersigned officer duly authorized to administer oaths and take acknowledgments, the undersigned persons who, after being first duly sworn by me according to law, upon their oath, depose and says: That they have read the Amended Bill of Complaint and understands the facts stated therein, and know of their own knowledge that the facts stated therein are true and correct, and those they do not know personally to be a fact they have reason to believe that they are true and correct.

ERNEST PAULK.
DAVID JAMES.
MOSES KIRKLAND.
NATHANIEL COOPER #1.
EDWARD C. SANDERS.
J. J. RIGGINS.
AMOS SCOTT.

Sworn to and subscribed before me this 16th day of August, A.D. 1962.

EARLENE WADE,
Notary Public, State of Florida
at Large.

(Seal)

My Commission Expires Aug. 17, 1965.

MOTION TO DISMISS.
Filed Aug. 27, 1962.
(Title Omitted.)

The defendant, Atlantic Coast Line Railroad Company a corporation, by its undersigned attorneys, moves the Court, as follows:

1. To dismiss the action because the Amended Complaint fails to state a claim against the defendant, Atlantic Coast Line Railroad Company, a corporation, upon which relief can be granted.

2. To dismiss the action because the Court lacks jurisdiction of the subject matter, exclusive jurisdiction of the dispute described in the Complaint being vested in the National Railroad Adjustment Board under the provisions of Sec. 3 First (i) of the Railway Labor Act, 64 Stat. 1151, 45 U.S.C. Sec. 153 First (i).

3. To dismiss the action on the ground that the Court lacks jurisdiction because the amount actually in controversy is less than $10,000.00 exclusive of interest and cost.

RAGLAND, KURZ, TOOLE & MARTIN,
By CLARK W. TOOLE, JR.,
Attorneys for Defendant,
Atlantic Coast Line Railroad Company.

704 Florida Theatre Building,
Jacksonville 2, Florida.

ALTERNATIVE MOTION TO DISMISS OR FOR SUMMARY JUDGMENT.
Filed Oct. 2, 1962.
(Title Omitted.)

Defendant Brotherhood Railway Carmen of America (erroneously described in the caption of plaintiffs' Amended Complaint as "The Grand Lodge of America"), moves the Court to dismiss the Amended Complaint herein, or in the alternative

to grant summary judgment in favor of the defendants, upon the following grounds:

1. The Complaint fails to state a claim for relief against this Defendant.

2. The Court lacks jurisdiction of the subject mater, exclusive jurisdiction of the dispute described in the Complaint being vested in the National Railroad Adjustment Board under the provisions of Section 3, First (i) of the Railway Labor Act (48 Stat.) 1191, 45 U.S.C., Sec. 153 First (ii).

3. The Amended Complaint fails to allege exhaustion of plaintiffs' administrative remedies, either within the tribunals of defendant Brotherhood, under the grievance procedure of the applicable collective bargaining agreements, or under the Railway Labor Act, and fails to allege any facts which would justify their failure to exhaust such remedies.

4. Contrary to the allegations of the Amended Complaint, and as more particularly appears from the officially certified copy of proceedings before the Second Division of the National Railroad Adjustment Board in its pending Docket No. 3860, which is attached hereto as Exhibit A and made a part hereof, this defendant, rather than acquiescing in the matters complained of by plaintiffs, has in fact processed a claim on behalf of similarly situated employees, including several of the plaintiffs herein, through the grievance machinery on the property of defendant Railroad and to said Second Division, where such claim, having been heard before said Second Division with a neutral referee participating, is currently awaiting decision.

Motion to Strike.

Subject to the foregoing Alternative Motion to Dismiss or for Summary Judgment, Defendant Brotherhood Railway Carmen of America moves the Court under Rule 12 (f), Federal Rules of Civil Procedure, to strike from the Amended Complaint herein paragraphs VIII (e), X, and XI, upon the ground that the allegations of said paragraphs are irrelevant and immaterial to the alleged cause of action set forth in the Amended Complaint.

MULHOLLAND, ROBIE & HICKY,

741 National Bank Building,
Toledo 4, Ohio

HEAD, RAMSAUR & HADBOTTS, MAHONEY, WHITELOW,
By W. HADLOW, JR.,
Attorneys for Defendant,
Brotherhood of Railway Carmen of America.

1712 Barnett National Bank Building,
Jacksonville 2, Florida

EXHIBIT A.

National Railroad Adjustment Board

Second Division

State of Illinois,

County of Cook, ss.

I, Harry J. Sassaman, Executive Secretary of the Second Division, National Railroad Adjustment Board, do hereby certify that each of the attached documents, identified thus:

1. Letter of November 5, 1960, to the National Railroad Adjustment Board over the signature of J. S. Head, General Chairman, Carmen, System Federation No. 42, consisting of 4 pages, and an Exhibit.

2. "Initial answer of the Atlantic Coast Line Railroad Company to Notice of Intention to File Ex Parte Submission filed by Carmen of System Federation No. 42, Railway Employes' Department, A. F. of L.-C. I. O." Submitted over the signature of W. S. Baker, Assistant Vice-President, Atlantic Coast Line Railroad Company, under date of December 27, 1960. This document consists of 9 pages.

3. Undated statement addressed to the National Railroad Adjustment Board over the signature of J. S. Head, General Chairman of the Carmen, System Federation No. 42, consisting of 4 pages.

4. "Carrier's Rebuttal in the Dispute Between Atlantic Coast Line Railroad Company and System Federation No. 42, Railway

Employes' Department, A. F. of L.-C. I. O.-Carmen" submitted February 25, 1961, over the signature of W. S. Baker, Assistant Vice-President, Atlantic Coast Line Railroad Company and consisting of 3 pages;

is a true and correct copy of the document it purports to represent as filed by the respective parties in dispute between System Federation No. 42, Railway Employes' Department, A. F. of L. C. I. O., and the Atlantic Coast Line Railroad Company, identified as Second Division Docket No. 3860.

I further certify that hearing before the Second Division of the National Railroad Adjustment Board on this dispute (Docket 3860) was held at the headquarters of the Division, Room 2130, Consumers Building, 220 South State Street, Chicago, Illinois on Thursday, March 2, 1961.

Thereafter, the Division being unable to agree upon the disposition thereof, the case was deadlocked on March 21, 1962, and referred to Referee Howard A. Johnson. In response to Carrier's request, hearing before the Division with the referee present, was held on June 7, 1962.

HARRY J. SASSAMAN
(Harry J. Sassaman)
Executive Secretary

Dated at Chicago, Illinois, this 25th day of September, 1962.

M. E. DILLON
Notary Public

(Seal)

November 3, 1960
Florence, S. C.

National Railroad Adjustment Board
Second Division
Consumers Building
Chicago 4, Illinois

Gentlemen:

The following dispute, which could not be satisfactorily disposed of with the carrier, is respectfully submitted pursuant to

the provisions of the Agreement and the Railway Labor Act as amended.

Parties to Dispute:
System Federation No. 42.
Railway Employes' Department.

A. F. of L.-C. I. O.-Carmen and Atlantic Coast Line Railroad Company.

Dispute:—Claim of Employees:

(a) That, under the controlling Agreement, Carmen Helpers (Car Oilers and Packers) listed below:

Florence, S. C.

F. Sumner.
J. Perry.
L. Battle.
C. Myers.
N. Smalls.
J. Scott.
W. A. Wilson.
T. Stackley.
C. C. Pierce.
H. S. Addison.
J. Echols.
R. Cain.
C. L. Sauls.
A. Wilds.
A. L. Hemingway.
D. H. Isgett.

Waycross, Georgia.

U. Carter.
Curtis Jackson.
M. McLendon.
P. Q. Todd.
J. A. Thrift.
F. J. Mumford.
M. Kirkland.
R. Rozier.

A. E. Parson.
F. E. Dean.
H. L. Howell.
W. E. Parker.
J. L. Smith.
J. A. Griffin.
C. G. Callahan.
I. E. Booth.
R. L. Blalock.
M. C. Boatwright.
J. L. Riggins.
N. B. Crews.
Curtis Hill.
J. M. Williams.
J. Young.
O. G. Thrift.
S. J. Jackson.

have been unjustly removed from service and supplanted by Carmen.

(b) That accordingly the Carrier be ordered to restore the above named Carmen Helpers (Car Oilers and Packers) to service with pay for all time lost as a result of said suspension.

Employes' Statement of Facts:

The Atlantic Coast Line Railroad Company, hereinafter referred to as the Carrier, employed the above named Carmen Helpers (Car Oilers and Packers), hereinafter referred to as the Claimants, as Car Oilers and Packers at the points as indicated below. They were furloughed in the following order:

Florence, S. C.—August 5, 1960.

Waycross, Georgia—August 9, 1960.

The work formerly performed by the affected employes has now been assigned to Carmen (Car Inspectors).

This claim has been progressed successively on appeal, as prescribed under the controlling Agreement, up to and including

the highest designated officer with whom disputes are to be handled and Carrier has consistently declined to make adjustment.

The Agreement, effective November 11, 1960, as amended and reprinted January 1958, is controling. Position of Employes:

It is the position of the Employees that car oiling and box packing is contractual work which belongs to Carmen Helpers. In support of this position, we quote below Rule 404—Carmen Helpers:

"Rule 404.

Revised, Effective September 15, 1945.

Carmen Helpers.

"Helpers' work shall be to assist carmen and apprentices and to do car oiling and box packing, rivet heating (except when performed by apprentices), operating bolt threaders, nut tappers, drill press, punch and shear operating (cutting only bar stock and scrap), holding on rivets, striking chisel bars, side sets, backing-out punches, using backing hammer and sledges, assisting in straightening metal parts of cars, washing, and scrubbing the inside and outside of passenger coaches preparatory to painting of coaches undergoing general repairs, paint spraying on freight cars and the underframes of coaches and locomotives, sand blasting, cleaning journals, Dodge and locomotive crane firemen (where used in Mechanical Department), and all other work generally recognized as helpers' work."

In an attempt to distort and nullify the intent of the Rule, Carrier states in a letter dated October 7, 1960 that the current Agreement does not give Carmen Helpers the exclusive right to Car Oilers and Packers' work. Copy of letter is attached, and marked Employes' Exhibit "A".

In Award No. 3062, the Carrier (ACL Railroad) contended that the car oiling and packing was work belonging exclusively to Carmen Helpers. They quoted the same Rule (Rule 404) in support of their position. Carrier also said in their Statement of Facts in the above named Award that,

"This work has been done by Carmen Helpers on this property for some forty years or more."

In fact, they were so effective in their presentation that they persuaded your Honorable Board that not only was car oiling and packing Carmen Helpers' work but that the brassing of cars was also Carmen Helpers' work. In support of this statement, I quote below pertinent parts of the "Findings of your Honorable Board in Award No. 3062:

"Rebrassing journals is not specified as Carmen's work in Rule 402 and the Carrier has shown that for many years it has been recognized as helpers' work. The employes show some paid claims in an atempt to refute that showing, but it appears that in each case something more than rebrassing was involved, usually some inspection which is admittedly mechanic's work. Under such circumstances, the claim is not supported by the rule and cannot be sustained."

In view of the foregoing, it is crystal clear that the Carrier is depriving the above listed Carmen Helpers of their contractual right to work now being performed by Carmen (Car Inspectors). Therefore, the Employes' Statement of Claim should be sustained in its entirety and the Honorable members of this Division are requested to so find.

All matters herein referred to in support of the Employers' Position have been the subject of correspondence or discussion with the Management.

An oral hearing is not requested.

Respectfully submitted,

J. S. HEAD,

(J. S. Head),

General Chairman, Carmen

—System Federation No. 42

Copy

EXHIBIT "A".

Atlantic Coast Line Railroad Company

Personnel Department

Jacksonville, Fla.

October 7, 1960.

Mr. J. S. Head, General Chairman,
Brotherhood Railway Carmen of America,
Route #4,
Florence, S. C.

Dear Sir:

Referring to our conference October 6 in connection with "Protest of Bulletin No. 239 dated August 3, 1960, and posted by Mr. E. L. Spicer, Master Mechanic, Waycross, Georgia—Claim: Violation of Rule 404 Current Agreement."

"Time claim in behalf of 25 Carmen Helpers furloughed Waycross, Georgia, effective August 9, 1960."

"Time claim in behalf of 16 Carmen Helpers furloughed Florence, S. C., effective August 5, 1960."

This will confirm advice extended to you in conference that Rule 404 of the current agreement does not give Carmen Helpers the exclusive right to oilers' and packers' work, and the claim is declined.

Very truly yours,

(S.) W. S. BAKER

Before The Second Division

National Railroad Adjustment Board

Initial Answer of the Atlantic Coast Line Railroad Company to Notice of intention to file Ex Parte Submission filed by Carmen of System Federation No. 42, Railway Employes' Department, A.F. of L.-C.I.O.

Statement of Claim:

1. That under the controlling agreement carmen helpers (Car Oilers and Packers) listed below:

Florence, S. C.

F. Sumner.
J. Scott.
R. Cain.
J. Perry.
W. A. Wilson.
C. L. Sauls.
L. Battle.
T. Stackley.
A. Wilds.
C. Myers.
C. C. Pierce.
A. L. Hemingway.
N. Smalls.
H. S. Addison.
D. H. Isgett.
J. Echols.

Waycross, Georgia

U. Carter.
A. E. Parson.
M. C. Boatwright.
Curtis Jackson.
F. E. Dean.
J. I. Riggins.
M. McLendon.
H. L. Howell.
N. B. Crews.
P. Q. Todd.
W. E. Parker.
Curtis Hill.
R. L. Blalock.
J. A. Thrift.
J. L. Smith.
P. M. Williams.
E. J. Mumford.
J. A. Griffin.

J. Young.
M. Kirkland.
C. G. Callahan.
O. G. Thrift.
R. Rozier.
L. E. Booth.
S. J. Jackson.

have been unjustly removed from service and supplanted by carmen.

2. That accordingly the Carrier be ordered to restore the above named carmen helpers (Car Oilers and Packers) to service with pay for all time lost as a result of said suspension.

Carrier's Statement of Facts:

Effective August 5, 1960, a reduction in force of sixteen (16) carmen helpers (car oilers and packers) was made in the train yard at Florence, S. C. Effective August 9, 1960, a reduction in force of twenty five (25) carmen helpers (car oilers and packers) was made in the train yard at Waycross, Georgia. The car oiling and box packing formerly performed by carmen helpers in the train yards is now being performed by carmen (car inspectors) in conjunction with their other work.

Rule 402 of the current agreement covering carmen's classification of work rule reads in part:

"(a) Carmen's work shall consist of building, maintaining, dismantling (except when being scrapped), painting, upholstering and inspecting all passenger and freight cars, both wood and steel . . ."

Rule 404 of the current agreement covering carmen helpers classification of work rule reads as follows:

"Helpers' work shall be to assist carmen and apprentices, and to do car oiling and box packing, rivet heating (except when performed by apprentices); operating bolt threaders, nut tappers, drill press, punch and shear operating (cutting only bar stock and scrap), holding on rivets, striking chisel bars, side sets, backing-out punches, using backing hammer and sledges; assisting in straightening metal parts of cars; washing and scrubbing the inside and outside of passenger coaches preparatory to painting of coaches undergoing general repairs, paint spraying

on freight cars and the underframes of coaches and locomotives; sand blasting, cleaning journals, Dodge and locomotive crane firemen (where used in Mechanical Department), and all other work generally recognized as helpers' work.

It will be readily observed, therefore, that Rule 404 is a permissive rule and does not grant to carmen helpers the exclusive right to oilers' and packers' work. The rule in itself contemplates that a helper is what the name implies "a helper." (Award 1380) Therefore, oiling and packing, when performed by a helper, simply means that the oiler is merely assisting the car inspector in performing the overall task of maintaining cars and handling the necessary light repair work.

Relying on the Board's decision in Award 1380, which has been consistently upheld in many subsequent awards, Carrier declined this and all identical claims.

Position of Carrier:

This Carrier possesses probably the largest fleet of roller bearing equipment in the railroad industry. Of its approximately 30,600 freight cars, nearly 10,000 cars are equipped with roller bearings and over 16,00 cars are equipped with lubricator pads. Approximately 900 car sets of lubricator pads are being currently applied to equipment each month. For this reason, there was no need to continue the employment of carmen helpers in train yards who simply had no loose waste packing to adjust other than the small amount necessary to handle the fast diminishing number of solid bearing cars equipped with loose waste packing. As the need for carmen for adjusting waste packing in yards decreased, they have been furloughed according to seniority.

As a further indication of the force adjustments brought about by changes and improvements in equipment design, the change from steam locomotive operation to diesel operation resulted in Carrier's machinist helper force being adjusted from a total of 348 in January, 1949, to 57 in October, 1960. Additionally: in January, 1949, Carrier employed 34 men, also in the machinist helper classification, whose sole duties were packing and adjusting loose waste in journal boxes on steam locomotives. Under full dieselization, this group has been entirely eleminated. It is also interesting to note that in January, 1949, Carrier's steam locomotive operation required a total of 94 employes as engine

watchmen, coal chute gang dealers; ash pit men, etc. Again, under full dieselization, this force has been reduced to zero."

The work of oiling and dressing down packing of solid bearing journal boxes in transportation yards has never, by agreement or custom, been duties contracted exclusively to the carmen helpers. There are many points throughout the system that have been functioning for many years without the employment of carmen helpers (car oilers and packers). In some yards, there is no record of carmen helpers having ever been employed. However, all carmen helpers performing oiling and packing of journal boxes have not been furloughed. Carrier continues to employ carmen helpers to assist carmen in performing periodic regreasing and repacking of roller bearings and lubricator pad equipped solid bearings on our various freight car repair (rip) tracks.

A car inspector is a mechanic in the carmen's craft. An oiler is a carmen helper and is paid a helper's rate of pay. It is generally understood and recognized that in the absence of a specific rule to the contrary, a mechanic may be assigned to perform any of the duties of his craft which he is qualified to perform. In fact, he has always been considered as the "Master" of his craft. Nothing in the agreement, including the classification of work rule, prohibits a mechanic from performing work that also is performed by helpers. The helper has never been regarded as having exclusive jurisdiction over his helping activities and Rule 404 quoted in Carrier's Statement of Facts, certainly cannot be construed as giving the carmen helpers the exclusive right to perform all car oiling and box packing or adjusting of loose waste.

Carrier desires to attract the Board's attention to "Opinion and Award of the Board of Arbitration, Pennsylvania Railroad Company and United Railroad Workers Division, Transport Workers Union of America, AFL-CIO, Arbitration 219 (Case E-22)", with Mr. Lloyd H. Bailer as Neutral Arbitrator and Chairman. The decision in the case was that the Pennsylvania Railroad Company did not violate the agreement when car oiler

positions were abolished and the work assigned to car mechanics.

The instant claim not only lacks agreement support but the same question was presented to the Second Division and decided in Award No. 1380 without the aid of a referee. The issue is not one new to this Division of the Adjustment Board; in fact, it is so similar to the issue decided in Award No. 1380 and in the Award of the Board of Arbitration referred to above, that it can only be viewed as another attempt to secure reversal of former adjudications. There are no essential differences in the factual situation here involved nor are there any substantial differences in the agreement rules to warrant this Division departing from the conclusions reached in Award 1380 or by the Board of Arbitration.

Award 1380, upon which Carrier relies heavily, involved a dispute essentially the same as the one herein, and was decided without the aid of a neutral referee. It has been consistently upheld by the Board and the Board has, and rightfully so, attached immense importance to the fact that the decision was rendered without interposition of a referee. In denying the claim in Award 3261, the Board said:

"There is, of course, much appeal to the claim because of the abolishment of the jobs of the carmen helpers, but when the positions are discontinued the right of the Carrier to assign the work of carmen helpers to carmen, as here, has been decided adversely to their claim by this Board in Award No. 1380 without Referee, Arbitration Award between the Pennsylvania Railroad Company and United Railroad Workers Division of Transport Workers Union of America, AFL-CIO, Arbitration 240 (Case No. 11) 3/1/57, and the Last Docket, No. 3087, this Division, Award No. 3262."

The findings in Second Division Award 1910, with Referee J. Glenn Donaldson, contained the following sentence:

"Awards 1243 and 1317 of this Division, decided without a Referee, are persuasive."

Referee Donaldson also sat with this Division in deciding the dispute covered by Award 2621. There he expressed quite well the feeling of Carrier when he made the following comment concerning the previously quoted sentence in Award 1949:

"That, perhaps, was an understatement. We now say that we should accord greater weight to an award rendered by the Division sitting without a referee based upon similar set of facts and rules than one in which an outside neutral participates and holds the result."

The Board took cognizance of the wisdom in Award 1380 and upheld the decision in denying the claims in Awards 3261, 3262, 3263 and 3508. In denying the claim in Award 3263, the Board said:

"We follow Awards 1380, 2621, 2959, 3261, and Arbitration Case (No. E-22) The Pennsylvania Railroad Company vs. United Railroad Workers Division, Transport Workers Union of America, AFL-CIO."

In Awards 3495, 3496, 3497, 3498, 3499, 3500, 3501, 3502, 3503, 3504, 3505 and 3507; the Board held that the same question, i.e., furloughing carmen helpers and assigning the oiling and packing to carmen, was decided in Award 3263 and denied the claims.

In the following denial awards, the Board said:
Award 3509:

". . . the question arises as to whether the assignment of such work to carmen and the resulting abolishment of carmen helper positions resulted in an agreement violation. We do not think that it did. The subject work is part of the overall activity of inspecting and maintaining cars, which activity is included in the carmen's classification of work rule of the agreement. The fact that carmen helpers may be used to perform oiling does not act as a bar to the assignment of this work to carmen. Rule 106 defines carmen helpers in terms of the types of work to which they are assigned, but it does not establish exclusive jurisdiction over work in relation to that which carmen may be used to perform."
Award 3510:

"Careful examination of the subject agreement reveals no provision which bars the use of carmen to perform work which also may be assigned to carmen helpers. In previous cases involving similar agreement language we have denied claims arising out of situations in which carmen helper positions were abolished and the work that had been performed by the incumbents of such positions was assigned to carmen."
Award 3511

"The work of inspecting and maintaining cars is included in Rule 149, which sets forth the 'classification of work' of carmen. The duties which are the subject of this controversy are covered by this rule. Carmen helpers may be used to perform the type of work referred to in Rule 151 but they do not have the exclusive jurisdiction over this work as against carmen. The Carrier therefore did not violate the agreement by assigning the involved work to carmen and abolishing the positions of the furman carman helpers."

Thus, in these three awards Carrier finds support in the age old recognition that lower rated work may be performed by higher rated positions, provided the higher rate of pay is maintained.

In adjusting its forces, Carrier has relied upon the Board's consistent decisions involving disputes both similar and identical to this case. To rule in favor of the employes and now find that those decisions and interpretations have a different meaning would certainly burden the Carrier with a financial payment which it would feel most unjust.

Complaint is here made because forty-one (41) carmen helper positions were abolished within a relatively short period. The normal and ordinary meaning of the agreement rules was not changed or modified by reason of the number of positions abolished. Carrier emphatically denies that its action constituted a violation of the agreement and has conclusively shown that the issue involved in this dispute has been decided previously by this Board in many, many awards. To again bring the issue up apparently is nothing more than an attempt on the part of

the employes to [illegible] of Rule 102. There is no merit to the claim of the employes and it should be declined.

Carrier reserves the right, when it is furnished with ex parte petition filed by the petitioner in this case, to make such further answer and defense as it may deem necessary in relation to all allegations and claims which may be advanced by the petitioner and which have not been answered in this initial submission.

Data in support of the Carrier's position has been presented to the Employes' representative.

Oral hearing is requested.

W. S. BAKER
Assistant Vice-President
Atlantic Coast Line Railroad Company

Jacksonville, Florida
December 27, 1960
National Railroad Adjustment Board
Second Division
Consumers Building
Chicago 4, Illinois

Gentlemen:

This is in reply to the Carriers' Submission No. 62 in the submission of the Atlantic Coast Line Railroad Company, hereinafter referred to as the Carrier, covered by Docket No. 3860, to-wit:

The Employes disagree most emphatically with the Carrier's contention that Rule 102 is a permissive rule. It has been apparent that the Carrier is interpreting Rule 102, Rule 104 and all other classification of work rules as permissive and by permissive they mean to permit any available employe to perform the work at hand, disregarding the classification of work rule controlling in the case in question. Rule 104 clearly states that helpers work SHALL be to do car oiling and box packing. There is no exception or qualification made in this portion of the rule. This rule further states that "Helpers' work shall be to bear

rivets," however, an exception is made here which is as follows: (except when performed by apprentices). If it had been the intent of the rule that employes other than carmen helpers should do car oiling and packing such an exception would have been made. Where exceptions are contained in a rule, it precludes the adding of additional exceptions, as such action would amount to a revision of the rule by this Division which they have no authority to do under the terms of the Railway Labor Act, as amended, as that is the duty reserved to the parties (Emphasis ours.)

The Carrier in an attempt to justify its action in this case contends that there is a diminishing need for carmen helpers, also helpers in other crafts. We specifically call the attention of your Honorable Board to their statement that they have the largest fleet of roller bearing equipment in the railroad industry and that they are installing approximately 900 sets of lubricator pads per month. They fail to include in this statement that in excess of ninety per cent of their roller bearing equipment operates continually on roads other than the Atlantic Coast Line and that a very small percentage of the equipment operating in their trains are equipped with roller bearings.

They have implied that cars equipped with lubricator pads require no servicing. This is very definitely a misrepresentation of the facts as free oil must be added to the journal boxes on these cars at frequent intervals to maintain the proper oil level. In fact more time is required in the servicing of cars equipped with lubricator pads than those using conventional waste packing. One of the reasons that so much time is required in servicing this equipment is that the car oilers and packers are required to carry the oil from the source of supply to the cars being serviced in cans which hold about two gallons of oil. No effective means of preventing the constant loss of oil from the journal boxes of cars equipped with lubricator pads has yet been devised, consequently the supply must be frequently replenished. The limited time allowed for the servicing of this equipment is [illegible] to cause an increase in the number of hot boxes occurring as

a result of improper lubrication. This statement is supported by the fact that the Carrier has recently conducted investigations at Tampa, Fla., Sanford, Fla., and Savannah, Ga., for the purpose of determining the cause of the increasing number of hot boxes. In most cases the cars giving the trouble were cars equipped with lubricator pads. It is, therefore, obvious that the need for carmen helpers is certainly not diminishing.

The Employes also take exception to the statement of the Carrier that the oiling and dressing down of the packing of solid bearing journal boxes has never, by agreement or custom, been the duties contracted exclusively to carmen helpers. In support of our position we respectfully call your attention to the Carrier's own statement in Award No. 3062, that:

"This work has been done by Carmen Helpers on the property for some forty years or more."

The Employes feel that forty years should certainly be long enough to establish a custom. Evidently the Board felt the same way as they sustained the Carrier's position that car oiling and packing was carmen helpers' work.

The Carrier's inference that this claim can only be viewed as an attempt to secure approval of former adjudications is emphatically denied on the basis of the fact that the decisions as made in Award No. 1380 and numerous other awards referred to by the Carrier as supporting their position have already been reversed in Award No. 3062 and others and [illegible] the Carrier's [illegible] and [illegible] in this case a [illegible] an Award rendered on this property on the facts and rules applicable on this property. We do not [illegible] the Carrier's statement [illegible] [illegible] by the Board [illegible] agreements controlling on other properties. In addition, custom as well as [illegible] and Award No. 3062 should be considered. Award No. 3062 of this Division was rendered subsequent to the [illegible] and Award No. 3867 of the Third Division was rendered subsequent to the Decision [illegible] was rendered with the aid of a Referee, which refutes the Carrier's statement in such cases. However, your attention is called to the fact that the carmen helpers Rule in the instant case uses the

the mandatory "shall" which is not contained in the Rules involved in the cited Awards from other properties. It is evident in reading the second full paragraph on page 8 that the Carrier made their decision to furlough the carmen helpers because of the decisions rendered by this Board on other properties, ignoring the current agreement applicable on this property and the custom existing under the agreement for forty years.

Many of the affected employes have been in the service for the Carrier in excess of thirty years and this is simply an attempt to defend the contractual rights and the seniority rights of these employes as set out in Rule 404 as it was interpreted and defined by your Honorable Board in Award No. 3062.

Conclusion.

All allegations or implications of the Carrier designed to support their position not heretofore specifically answered are emphatically denied. On the basis of the facts of record and the reasons hereinbefore set forth, in conjunction with the Employes' original submission, including the applicable provisions of the current agreement to the facts, the Statement of Claim in its entirety should be sustained by this Division.

Respectfully submitted,

J. S. HEAD,
(J. S. Head),
General Chairman of the
Carmen System Federation
No. 42.

3A/dg

Before the Second Division, National Railroad Adjustment Board.

Carrier's Rebuttal in the Dispute Between Atlantic Coast Line Railroad Company and System Federation No. 42, Railway Employes' Department, AFL-CIO—Carmen.

Docket No. 3860 ACL-CM.

The employes, in the absence of any merit or basis for their claim, have made a feeble attempt to confuse the issue and distort the facts. Carrier asserts that it has correctly set forth

in its initial submission the essential facts and data [illegible] the instant claim without any attempt to distort or nullify the rules as the employes allege. Conversely, however, the employes have indulged in misrepresentation on page three of their submission wherein they stated, "In Award No. 3062, the Carrier (ACL Railroad) contended that the car oiling and packing was work belonging exclusively to Carmen Helpers." Nowhere in Award No. 3062, as they well know, can such a statement be found or any language used that can be so construed or interpreted to give such a meaning. Carrier is fully in accord with the statement that, "This work (car oiling and packing) has been done by Carmen Helpers on this property for some forty years or more." However, Carrier has never conceded that car oiling and packing was work belonging exclusively to Carmen (Mechanics) or Carmen Helpers.

Award No. 3062, upon which the employes rely, has no bearing on the instant claim. The issue in that Award was whether Carmen Helpers were properly entitled to rebrass and oil and pack journal boxes on line of road. In that case, a helper was sent from Westwood Shops (Fitzgerald, Ga.) to Douglas, Ga., with specific instructions to rebrass a journal and oil all other boxes under a car that had been set out due to a hot box. Subsequently, the car was picked up and moved to Ambrose, Ga., approximately 42 miles from Douglas, Ga., where it was again set out account of the same journal running hot. As a result, a car inspector was dispatched to Ambrose, Ga., to inspect the car and prepare it for safe movement. In both instances the employes did exactly what they were instructed to do. The helper was instructed to rebrass the car and the inspector was instructed to inspect the car. Nowhere in its submission did Carrier contend that car oiling and packing was work belonging exclusively to Carmen Helpers as the employes have alleged in their submission.

The work of oiling and dressing down packing of solid bearing journal boxes in transportation yards has never, by agreement or custom, been duties contracted exclusively to Carmen

Helpers, and as the need for their services in train yards diminished, they have been furloughed according to seniority.

The employes have cited one Award in attempting to support their contention, wheras Carrier has cited numerous Awards to support its action, the vast majority of which are more recent than the one cited by the employes, and in adjusting its forces Carrier has relied upon these consistent decisions of the Board involving disputes both similar and identical to this case.

The claim is wholly without basis for contention and represents nothing more than an endeavor to get the Division to reverse itself. The Board is, therefore, respectfully requested to deny the claim in its entirety.

In the event the Board should deadlock and fail to reach a decision, the Carrier requests an opportunity to appear before the Referee.

W. S. BAKER,
Assistant Vice-President
Atlantic Coast Line
Railroad Company

Jacksonville, Florida,
February 23, 1961

ORDER TRANSFERRING CERTAIN PROCEEDINGS TO THE MIDDLE DISTRICT OF FLORIDA.

Nov. 5, 1962.

United States District Court, Southern District of Florida.

George Britton, et al.

vs. No. 5476-Civ-J

Atlantic Coast Line Railroad, Co. et al.

Re: Transfer of Certain Cases to the Middle District.

Pursuant to the provisions of Section 1405 of Title 28, United States Code, it is

Ordered that all Civil actions and Civil proceedings of every nature and all proceedings in Admiralty, which are pending in this Court by reason of the former inclusion of Baker, Bradford, Brevard, Charlotte, Hillsborough, Citrus, Clay, Columbia, De Soto, Duval, Flagler, Hamilton, Hardee, Hernando, Lake, Lee, Madison, Manatee, Marion, Nassau, Orange, Osceola, Pasco, Pinellas, Polk, Putnam, Saint Johns, Sarasota, Seminole, Sumter, Suwannee, Union and Volusia counties of the State of Florida, in this Judicial District shall be and the same are hereby transferred for all purposes to the United States District Court for the Middle District of Florida and the Clerk of the United States District Court for the Southern District of Florida is authorized and required to transfer all papers relating to any such case to the Clerk of the United States District Court for the Middle District of Florida.

A copy of this Order shall be mailed to counsel of record in all actions or proceedings affected by this Order. A copy of this Order and proof of mailing shall be filed in each case so transferred.

Done and Ordered this 29th day of October, 1962.

(S.) DAVID W. DYER,
Chief Judge, United States
District Court, Southern
District of Florida

cc. Ernest D. Jackson, Sr., Esq., 110 Broad St., Jacksonville, Fla.
Mulholland, Robie & Hicky, 711 National Bank Bldg.,
Toledo 4, Ohio.

Botts, Mahoney, Whitehead, Ramsaur & Hadlow, 1612 Barnett National Bank Bldg. Jacksonville 2, Fla.
Ragland, Kurz, Topple & Martin, 704 Fla. Theatre Bldg. Jacksonville 2, Florida.

SUMMARY FINAL JUDGMENT

Filed Dec. 3, 1962

In the United States District Court for the Middle District of Florida, Jacksonville Division.

A. C. King, Nathaniel Cooper, William Leaphart, Johnnie Barnes, J. A. Bradley, Curtis Hall, Joseph Young and Curtis Jackson, all Plaintiffs being Carmen Helpers employed by the Atlantic Coast Line Railroad Company, for themselves and on behalf of all other Carmen Helpers similarly situated, Plaintiffs,

vs. No. 4576-Civ J

Atlantic Coast Line Railroad Company, a Corporation doing business in the State of Florida and Georgia; The Grand Lodge of America, an unincorporated union association doing business in the State of Florida and Georgia and affiliated with the A. F. L.-C. I. O., Defendants.

All affected parties, by their counsel, having been heard after due notice, upon the matters herein disposed of, it is upon consideration Ordered and Adjudged:

1. The motion ore tenus by the Defendant Atlantic Coast Line Railroad Company (hereinafter called the Defendant Railroad) for leave to join in the motion of the Defendant The Grand Lodge Brotherhood of Railway Carmen (hereinafter called the Defendant Union) for summary judgment is granted and that motion is treated as having been filed jointly by the Defendant Union and the Defendant Railroad.

2. The alternative motion of the Defendant Union for summary judgment, in which the Defendant Railroad has joined, is granted upon the second ground thereof, namely that this Court lacks jurisdiction of the subject matter.

3. The additional motions to dismiss and to strike filed by the Defendants are not passed upon.

4. The amended complaint contains broad conclusions but no specific allegations charging the Defendant Union with hostile discrimination against the Plaintiffs and other members of their class who are allegedly a minority group within the Defendant Union. From the officially certified copy of the proceedings before the Second Division of the National Railroad Adjustment Board, in its pending Docket No. 3860, which is attached as Exhibit "A" and made a part of the alternative motion for summary judgment, it appears to the Court that the Defendant Union has not acquiesced in the actions of the Defendant Railroad complained of in the amended complaint, but on the contrary the Defendant Union has actively processed a grievance on behalf of some of the plaintiffs and other employees similarly situated through the grievance machinery existing under the controlling agreement between the Defendant Union and the Defendant Railroad. In that grievance it has attacked the very actions of the Defendant Railroad complained of in the amended complaint. That grievance, not having been settled between the Defendant Union and the Defendant Railroad, was submitted by letter dated November 30, 1960, to the Second Division of the National Railroad Adjustment Board. A hearing before that Division on the dispute was held at the headquarters of the Division on Thursday, March 2, 1961. Therefore, the Division, being unable to agree upon the disposition thereof, the case was deadlocked on March 21, 1962, and referred to a referee. A hearing before the Division with the referee present was held on June 7, 1962. No decision had been reached by the referee as of September 25, 1962, the date of the certificate attached to the alternative motion for summary judgment. No counter-affidavit or other evidence has been submitted by the Plaintiffs from which it could be inferred that the Defendant Union has not prosecuted the grievance in good faith or that it has unfairly represented the Plaintiffs in connection with the matters which they complain of. It appears therefore, that there is no evidence raising a genuine issue of the hostile discrimination charged against the Defendant Union.

There being no substantial evidence of hostile discrimination, the exclusive jurisdiction of the matters complained of lies in the National Railroad Adjustment Board. Slocum v. Delaware, Lackawanna & Western R. Co., 1959, 339 U.S. 239, 70 S. Ct. 577, 94 L.Ed. 795; Order of Railroad Conductors v. Southern R. Co., 1950, 339 U.S. 255, 70 S.Ct. 585, 94 L.Ed. 811; and Fingar v. Seaboard Air Line R. Co., 5 Cir. 1960, 277 F.2d 698, 700.

Done and Ordered at Tampa, Florida, within said District this 4th day of December, 1962.

BRYAN SIMPSON,
Chief Judge, Middle District
of Florida.

Ernest Jackson, Sr., Esquire,
410 Broad Street,
Jacksonville 2, Florida.

Messrs. Ragland, Kurz, Toole & Martin,
703 Florida Theatre Building,
Jacksonville 2, Florida.

Messrs. Botts, Mahoney, Whitehead,
Ramsaur and Hadlow,
1712 Barnett Bank Building,
Jacksonville 2, Florida.

NOTICE OF APPEAL

Filed Jan. 3, 1963.

In the United States District Court for the Middle District of Florida, Jacksonville Division.

A. C. King, Nathaniel Cooper, William Leaphart, Johnnie Barnes, J. A. Bradley, Curtis Hill, Joseph Young and Curtis Jackson, all Plaintiffs being Carmen Helpers employed by the Atlantic Coast Line Railroad Company, for themselves and on behalf of all other Carmen Helpers similarly situated, Plaintiffs,

vs. No. 4576-Civ-J

Atlantic Coast Line Railroad Company, a Corporation doing business in the State of Florida and Georgia; The Grand Lodge of America, an unincorporated union association doing business in the State of Florida and Georgia and affiliated with the A.F. of L.-C.I.O., Defendants.

Notice Is Hereby Given that A. C. King, Nathaniel Cooper, William Leaphart, Johnnie Barnes, J. A. Bradley, Curtis Hill, Joseph Young, and Curtis Jackson, all Plaintiffs being Carmen Helpers and employed by the Atlantic Coast Line Railroad Company, the above named petitioners, hereby appeal to the United States Court of Appeals for the Fifth Circuit from the Summary Final Judgment entered on December 4, 1962, said Summary Final Judgment being duly recorded on Microfilm Roll Number 23.

ERNEST D. JACKSON, SR.,
(Ernest D. Jackson, Sr.),
Attorney for Plaintiffs

410 Broad Street, Suite 208,
Jacksonville 2, Florida.

POINTS TO BE RELIED UPON ON APPEAL.

Filed Jan. 14, 1963.

(Title Omitted.)

1. Whether or not the District Court committed reversible error in granting a Summary Final Judgment to the defendants upon the grounds that the District Court had no jurisdiction of the subject matter; notwithstanding, the alleged subject matter consist of hostile discrimination on the part of a majority faction discrimination on the part of a majority faction of the union of the union in permitting the railroad to transfer jobs that had been performed by the minority faction for a period of over fifty (50) years to a designated group of the majority faction that consisted of only white employees, and where the colored majority of the minority faction had been denied the privilege of becoming a member of the designated group of the majority faction, to-wit: Car Inspectors, and where the majority faction and the minority faction had separate seniority rosters in regard to the performance of their separate assigned jobs, and the transfer of said jobs to the majority faction resulted in the loss of employment to a great number of the plaintiffs and jeapardized the jobs of the remaining members of the minority faction.

2. Whether the Court committed reversible error in making a determination, on a bare affidavit by the defendant, that the defendant union was not guilty of hostile discrimination and that it had not acquiesced in the action of the defendant railroad company because the union filed an action with the Railroad Adjustment Board in November, 1960, approximately a month after plaintiffs had filed their complaint in the District Court, and where the record further show that plaintiffs' complaint was filed some fifty-seven (57) days after the plaintiffs had been

dismissed from their jobs, and after the union officials had instructed plaintiffs that they could do nothing about plaintiffs situation, and where the exhibit presented by the defendants clearly show that the union had on previous occasions taken the same position as the defendant railroad company is taking in this matter, to-wit: The Carmen could do the Carmen Helpers jobs and where the union had in fact permitted the members of the majority faction to actually do the work taken from the minority faction without requiring a negotiation on the disputed matters and demanding that plaintiffs remain on their jobs until said negotioations were completed, thereby invoking the benefits of the Railroad Labor Act to protect the jobs of the minority faction.

3. Whether the Court committed reversible error in holding that the Amended Complaint as filed herein contained allegations of discrimination too broad after the trial Court had granted plaintiffs Motion to Dismiss the Original Complaint chiefly because said complaint contained detailed allegations of the acts of discrimination on the part of the defendants.

4. Whether or not a Union can discriminate against a minority faction of the union so as to take away the jobs originally performed by the minority faction and to give said jobs to the majority faction, and at the same time deprive the members of said minority group of seeking aid from a United States District Court to enjoin them from said hostile discrimination by insisting that the members of said minority must first appeal to the Railroad Adjustment Board, whose sole job is to interpret the language of the contract and not to determine whether the union has or has not fairly represented the injured member of the minority faction.

5. Whether or not the abolishing of jobs held by Negro Carmen-Helpers for a period of fifty (50) years or more and the transfer of the same jobs to be performed by white carmen

inspectors is a denial of the Negro Carmen-Helpers' rights in violation of the Railway Labor Act and subject to a determination by the United States District Court.

6. Whether or not a United States District Court has jurisdiction to determine the rights of Negro Carmen-helpers in connection with work they had performed for over fifty (50) years where the same work was transferred to be performed by white carmen inspectors who did not perform such work prior to the said transfer and where said Carmen-helpers were on a separate seniority roster from that of the car inspector, and where the Negro carmen-helpers had been consistently denied the right to hold a car inspector's job during this entire period of time.

7. Whether or not Railroad Carmen-helpers which consisted of a majority of Negroes who had been required to join a segregated local and who over a period of years have demanded the National Union to permit them to serve as apprentices for various jobs including the job of carmen and been denied this privilege by the National Union and where History further shows that the carmen unions have consistently argued that the carmen could do all the jobs performed by the carmen-helpers and where the union permitted white members of the carmen-craft to perform jobs that have been taken from the Negro carmen-helpers, over their protest, would be required to exhaust "so called" administrative remedies within the union or under the Railway Labor Act before bringing action in the United States District Court against said union.

ERNEST D. JACKSON, SR.,
(Ernest D. Jackson, Sr.),
Attorney for Plaintiffs.

410 Broad Street, Suite 208,
Jacksonville, Florida.

COMPAINT.

Filed Oct. 6, 1960.

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, JACKSONVILLE DIVISION.

No. 4576-Civ.-J.

GEORGE BRITTON, NATHANIEL COOPER, WILLIAM LEAPHART, JOHNNIE BARNES, J. A. BRADLEY, CURTIS HILL, JOSEPH YOUNG, AND CURTIS JACKSON, all Plaintiffs being Carmen Helpers employed by the Atlantic Coast Line Railroad Company,

Plaintiffs,

versus

ATLANTIC COAST LINE RAILROAD COMPANY, A Corporation doing business in the State of Florida and Georgia; CARMEN OF AMERICA, an unincorporated union association doing business in the State of Florida and Georgia and affiliated with the A.F. of L.-C.I.O.,

Defendants.

Plaintiffs are citizens of the State of Georgia; the Defendant, Atlantic Coast Line Railroad Company is a Corporation having one of its principal offices in Jacksonville, Duval County, Florida, and is engaged in business within both the State of Florida and Georgia and has officers and agents within the State of Florida. The Defendant, Brotherhood Railway Carmen of America, is a national unincorporated union association having its principal office and place of business in the State of Kansas but is engaged in business within the State of Florida and has officers and agents in said state; that the amount in controversy exceeds Ten Thousand Dollars ($10,000.00) exclusive of interest and cost.

II.

Jurisdiction in this suit exists under and by virtue of the provisions of Title 28, USC, Secs. 1331 and 1337; 45 USC, Secs. 151 and 152.

III.

The Defendant, Brotherhood Railway Carmen of America, hereinafter referred to as the "Brotherhood" is a national unincorporated association whose membership is derived principally from Carmen and Carmen Helpers employed on interstate railroads including the Defendant, Atlantic Coast Line Railroad Company, hereinafter referred to as the "Railroad." It is composed of a Grand Lodge and a number of subordinate lodges called Local Lodges and Joint Protective Boards which are so numerous as to make it impracticable to bring them all before the Court. The subordinate lodges are unincorporated associations each composed of numerous individuals employed as Carmen and Carmen Helper Craft and it is likewise impracticable to bring them all before the Court. The National Officers of the Brotherhood are elected by the delegates of the subordinate lodges, who by law or custom must be a Carmen, assembled in convention meeting. The Brotherhood has a common national treasury derived from membership dues and other sources.

IV.

The Brotherhood has been designated by the Carmen and Carmen Helpers of said Railroad to act for them as their bargaining agent pursuant to Section 2 of the Railway Labor Act, 45 USC, Secs. 151-152, and said Brotherhood is the sole and exclusive bargaining agent for said railroad employees. The Brotherhood has negotiated on behalf of plaintiffs and all other Carmen Helpers and Carmen on said railroad a contract with the Railroad with respect to pay, working conditions, seniority and other allied matters which contract is now in full force and effect. A copy of said contract is filed with the original of this complaint and made a part hereof being marked as Plaintiffs' Exhibit "A" to this complaint.

V.

This suit is brought on behalf of Plaintiffs as Carmen Helpers and on behalf of all Carmen Helpers so employed by the Defendant Railroad and represented by the Defendant Brotherhood as their exclusive bargaining agent, operating through Steam Federation No. 42, Railway Employees Department, A. F. of L.-C.I.O.

VI.

The above named plaintiffs are employed in the Waycross Georgia Train Yard of the Railroad and are members of Florida Lodge No. 690 of the Brotherhood, hereinafter referred to as Lodge No. 690, a subordinate group of the Brotherhood; that it is subject to the rules and regulations, Constitution and By-Laws of the Brotherhood; that said "Lodge No. 690" is a segregated Lodge composed of all Colored Carmen and Carmen Helpers; that said Lodge No. 690 and its members are nevertheless subject to the discipline of the National or Grand Officers as well as local officers. Under the Constitution of the Brotherhood each local lodge is permitted to elect from among its members of Carmen, a local Protective Board with a local chairman. The local chairman servies as the local representative of the Brotherhood and is charged with the local enforcement of the rules and regulations of the Brotherhood. All Carmen Helpers who are not Colored are permitted to join Waycross Lodge No. 508, who also elect its local Protective Board with a local chairman. While Lodge No. 690 is no longer by law an auxiliary lodge, nevertheless, by rules and continued custom, all grievances involving members of Lodge No. 690 are handled with the local officers of the Railroad by the local chairman of Lodge No. 508. Lodge No. 690 is also required to pay to Lodge No. 508 at least ten cents (10c) per member for its entire membership. All the local chairmen of the local lodges are organized into a Joint Protective Board with a General Chairman. The General Chairman of the Joint Protective Board has the authority and duty to present all grievances and complaints to the General Officers of the Railroad. The General Chairman is charged with the duties of acting as the executive head of all union matters affecting the Carmen and Carmen Helpers employed on the Railroad, both as respects negotiations with the Railroad and the handling of internal matters of the union.

VII.

The members of the Joint Protective Board and the General Chairman are officers within the framework of the Brotherhood, and are elected in accordance with the Constitution and By-Laws thereof; a copy of the Constitution and By-Laws of the Brother-

hood is filed with the original of this complaint and made a part thereof, being marked Plaintiffs' Exhibits "B" and "C" respectively.

VIII.

(a)) The Plaintiffs are employees of said Railroad and have been for a period of five (5) to forty (40) years and are also members of Lodge No. 690. At all times material herein, by custom and uniform contract between the Railroad and the Carmen Helpers employed thereon, the job of oiling and packing in the yards by custom has been a specific job contracted for the Carmen Helpers. That the Carmen Helpers have by custom and over an extended period of time performed the specific job of oiling and packing in the yards all over the system.

(b) Prior to 1940, the Carmen and the Carmen Helpers included on the same seniority roster. Subsequent to 1940, the Carmen Helpers were placed on a separate seniority roster. The Carmen and the Carmen Helpers worked under the same work rules and their work tended to overlap at various points on the line; however, in the shops their work was more distinctly defined. The work divisions were confused further by permitting the individual to work one day at a Helper's job and another day at a Mechanic's job, nevertheless, the classification of work itself would determine the rate of pay the individual worker was entitled to receive. A Carmen Helper's rate of pay was paid for doing Car Packing and Oiling on the yard.

(c) The 1917 Agreement known as the Southeastern Agreement apparently made no distinction in the job classification of work done by Carmen, and for said reason, the word "Carmen" had no technical distinction as to specific work classification for Carmen as opposed to Carmen Helper's work, as recognized in the National Agreement Negotiated and which became effective on September 20, 1919. Prior to 1919 all other crafts had Help- [illegible] would indicate there was a classification, distinction

of work within each craft; however, in 1917, the National Agreement set up a classification of work rules within the Carmen craft; the Carmen Helper being assigned to do work designated by Rules 156, which is substantially the same as Rule 404 of the present contract.

(d) As far back as 1919, under the National Agreement, the Carmen Inspector did not perform the duty of repairing safety appliances or making light running repairs or oiling and packing boxes. The National Agreement of 1919 provided as follows:

"Rule 161. Men assigned to follow inspectors in yards to make safety appliance and light running repairs shall not be required to work on cars taken from trains to repair tracts."

(e) History reveals that the Carmen Inspector is in a different classification from the regular Carmen Mechanic. This distinction has persisted up until this very day. The defendants are now demonstrating this distinction by trying to demand all present Carmen to pass the Inspector's examination as illustrated by Plaintiffs' Exhibit "D" attached hereto and expressly made a part of this complaint.

(f) The classification of work assigned to Carmen as distinguished from the work assigned to Carmen Helper was based more or less on a differential rate of pay for certain types of work, rather than the classification of the individual worker. The lowest rate of pay was paid for the heaviest, dirtiest, and most back-breaking job in the Carmen craft. Negroes were generally assigned to do this type of work in the Carmen craft. Oiling and packing boxes was one of these dirty, heavy, back-breaking jobs. The Carmen, for a higher rate of pay was generally assigned the lighter and more technical work except the job of truck building and draft gear work which Negro Carmen were generally assigned to do.

(g) In every agreement and contract since 1919, negotiated between the employees of the Carmen craft and the Defendant Railroad Company, the job of oiling and packing boxes has been work contracted for the Carmen Helper and no work contracted for the Carmen or the Carmen Inspector. The Agreement

for Carmen Helper between the Atlantic Coast Line Railroad Company and Employees of the Mechaincal Department represented by the Shopmen's Association, effective December 1, 1955 provides as follows:

(Rule 29 Section F, Page 22.)

"Carmen Helpers work shall be to assist the Carmen and apprentices, or be car oilers and packers."

A copy of said Agreement being filed with the original complaint and made a part hereof, as Plaintiffs' Exhibit "E". The present contract between the Carmen Helper and the Defendant Railroad filed herein as Plaintiffs' Exhibit "A", provides as follows:

"Rule 404 Revised, effective September 15, 1943.
Carmen Helpers.

Helpers work shall be to assist the Carmen and apprentices, and to do car oiling and box packing . . ."

IX.

Plaintiffs allege that they are being deprived of their property rights by the defendants, to-wit: fair and equal representation in the protection of their jobs, wages and seniority rights acquired pursuant to Rule 12-F, Page 17, and Rule 404, Page 50, as clearly stated in their present contract with the Railroad (Exhibit "A").

X.

That while plaintiffs are members of the Defendant Grand Lodge, Brotherhood Railway Carmen of America as Carmen Helpers, they are denied the right to serve as a delegate or representative in any official capacity. That the plaintiffs are also Negroes and because of their race and color they are denied the right to join Local Lodge No. 508, a lodge composed of only White employees, and are forced to join Florida Lodge No. 690, a lodge composed of only Colored employees. That Negroes under the old Constitution of the Brotherhood were required to join seperate lodges which were represented in the Joint Protective Boards and Conventions by delegates from the nearest white local lodge under the present and revised 1958

Constitution of the Brotherhood, the Colored lodges are given representation in the Joint Protective Board, but the local chairman of the White lodge has continued up to this date to be the local representative to handle all working conditions and grievances involving the carrier and the Colored employees; notwithstanding the Negro lodge has its own local chairman. Since the chartering of the Negro local plaintiffs have had to pay a per capa fee to the White Local Lodge No. 508 for being represented by the Local Chairman of the White Local Lodge.

XI.

Even the representation given to the Negro Lodge has been limited to the Negro Carmen. The Negro Carmen Helper has no vote which he as a Carmen Helper can cast in any stage of the collective bargaining process affecting his work rate of pay, or working condition, except voting for the General Chairman who must be a Carmen. The Carmen Helper is placed in the awkward position of having work contracted for under a separate seniority roster, which by nature is closely connected and akin to the work of the Carman; yet, he has no representation except by the Carmen craft.

XII.

That both defendants are guilty of discriminating against plaintiffs and other Negro Carmen Helpers similarly situated in that Negro Carmen Helpers have been completely denied the right, over a period of more than twenty-five (25 years, to participate in any of the apprenticeship programs which would have elevated them to the position of a Carmen; notwithstanding, the Constitution of the Brotherhood provides as follows:

"No person shall engage himself as an apprentice until he has reached the age of 16 years, and no person shall engage himself as an apprentice after he has reached the age of 25 years, except that any person who has worked as a Carmen's Helper for two years in the shop where he desires to become an apprentice, may, if he is not at that time past the age of 35 years engage himself to his employer as an apprentice."

XIII.

Both defendants are guilty of violating the work agreement now existing between the carrier and the plaintiffs by the following acts:

(a) TheDefendant Atlantic Coast Line Railroad Company posted three bulletins, to-wit: Bulletin No. 239, dated August 5, 1960; No. 240, dated August 4, 1960, and No. 241, dated August 4, 1960 all of which are attached hereto as Plaintiffs' Exhibits "F", "G" and "H" respectively.

(b) Bulletin No. 239,dated August 5, 1960 as Plaintiffs' Exhibit "F" purported to reduce the force of helpers which resulted in cutting off some of the Plaintiffs and removing the other Plaintiffs, and those similarly situated from doing the work of oiling and packing boxes in the yard.

(c) Bulletin No. 240, although dated prior to Bulletin No. 239, increased the force of Inspectors to be assigned to the same and assigned to do the same work then being done by the plaintiffs, to-wit: car oiling and packing.

(d) Bulletin No. 241, although dated prior to Bulletin No. 239, also abolished the job of two white Inspectors and assigned them to doing work that was then being done by the colored Carmen Helpers who are plaintiffs in this case.

XIV

Car oiling and box packing has been done by Carmen Helpers employed by the Defendant Atlantic Coast Line Railroad Company for more than 40 years, a fact known by the Railroad and some of the plaintiffs as shown by the early work agreements filed herein.

XV

That the Defendant Brotherhood has permitted Carmen to be employed by the Defendant Railroad to do car oiling and box packing in the Waycross yard, and in various other Railroad yards at other points on the line. That plaintiffs objected to this action taken by the Defendant Railroad Company and acquiesced in by the Defendant Brotherhood. That on August 2, 1960, plaintiffs through Local Chairman of Lodge No. 690, requested the Local Chairman of Waycross Lodge No. 508, pursuant to customt, to protest Bullentins Nos. 239 and 240 (Plaintiffs' Exhibits "F" and "G" respectively). That on August 11, 1960 Mr. E. L. Spicer, Master Mechanic of the Waycross, Georgia Yard, rejected the protest as a violation of Rule 40

in the following language:

"Rule 404 does not give car oiler and packers exclusive rights to this work, and as there is no violation to the current agreement; your request is declined."

On August 17, 1960, the Local Chairman, J. W. Hughes, turned the matter over to J. S. Head as the General Chairman of the Joint Protective Board. That more than thirty (30) days have passed since this mater was presented to the company and as of this date, the matter has not been settled. The Defendant Railroad Company has continued to replace Carmen Helpers with Carmen.

XVI.

That in the dispute existing between the Carmen and the Carmen Helpers over the job of oiling and packing with the Defendant Railroad the Carmen Helper is the minority faction of the Carmen craft and for said reason, the Brotherhood, operating through its officers who are all Carmen, has not and cannot fairly represent the interest of the Carmen Helpers. That the remedies within the Union are not adequate to safeguard the Carmen Helpers and for said reason plaintiffs have exhausted the remedies available to them within the union. That the General Chairman of the Protective Board has already advised plaintiffs that there is nothing that can be done about this situation.

XVII.

That the action and threatened action of the Defendant Railroad and acquiesced in by the Defendant Brotherhood would have the direct effect of depriving plaintiffs and those similarly situated as Carmen Helpers of regular jobs and greatly reduce their earnings; that the taking away of the job of all oiling and packing on the yard and having them performed by Carmen will displace forever jobs contracted for Carmen Helpers for which plaintiffs hold seniority rights and in which they have vested contractual interests. Plaintiffs will sustain permanent and irreparable injury unless the Defendant Railroad Company and the Defendant Brotherhood are enjoined from violating

plaintiffs' rights under the Railroad Labor Act (45 USC Sec. 151, et seq.) and their existing contract with the Defendant Railroad.

XVIII

The action taken and threatened herein by the Defendant Railroad and acquiesced in by the Defendant Brotherhood is a violation of the duty imposed by the Railroad Labor Act (45 USC Secs. 151 and 152). That the entire class of Carmen Helpers as a minority is being subjected to the hostile discrimination of the majority faction of the Brotherhood and the Defendant Railroad is being permitted to arbitrarily break its contract with plaintiffs. That not only has the company taken the job of oiling and packing away from the Carmen Helpers and assigned it to Carmen, the Railroad, with the acquiescence of the Defendant Brotherhood has launched upon a plan of taking jobs that were heretobefore contracted under Rule 104 for the Carmen Helper and performed by Carmen Helpers within the shop over an extended period of time, towit: viz; rivet heating, holding on rivets, cleaning journals and assigning said work to Carmen. That Defendant Railroad is threatening to continue furloughing Carmen Helpers and assigning their work to Carmen, the result of which will eventually eliminate the entire Carmen Helpers class, which in effect will mean the removal of the Negro Carmen Helper from the Railroad industry on this line throughout the South.

XIX

The action of the Defendant Railroad Company, acquiesced in by the Defendant Brotherhood, violates plaintiffs' contractual rights with the Defendant Railroad as well as violates plaintiffs' rights secured to them under the Constitution and By-Laws of the Brotherhood. The action aforesaid represents a complete breakdown in the ordinary processes of collective bargaining betwee nthe Brotherhood and the Railroad; that such action is a complete breach of the fiduciary duty resting upon the Brotherhood and its officers and agents to treat the members of the organization fairly and impartially and in accordance with

the Constitution and By-Laws of the Brotherhood; that if such unlawful and unfair action is permitted it cannot fail to lead to a disruption of the ordinary flow of interstate commerce; that such action is an unfair, arbitrary, unauthorized and unlawful act of favoritism by the defendants over the Carmen Helpers, and the plaintiffs in particular.

XX.

That the plaintiffs, for the reasons stated herein, have no adequate remedy within the framework of the Brotherhood; that they have no administrative relief except in a Court of equity. Unless this Court grants relief they will be without adequate remedy and will continue to suffer irreparable and incaluculable injury.

Wherefore, plaintiffs pray:

1. That this Court take jurisdiction of the parties and the subject herein involved.

2. That proper process issue and be served upon the defendants requiring them to appear and answer this complaint.

3. That a preliminary injunction, pending the final judgment of this action against the Defendant Railroad, its officers, agents and employees be granted by order of this Court enjoining and restraining it and each of them from discharging plaintiffs and all Carmen Helpers similarly situated from performing the work of oiling and packing in the yards throughout the system where said work was being performed by Carmen Helpers on or before August 1, 1960.

4. That a preliminary injunction pending the final judgment in this action against the Defendant Railroad, its officers, agents and employees and the Defendants Brotherhood, its officers, agents and members, be granted by order of this Court, enjoining and restraining them from permitting and assigning Carmen and the employees of any other craft except Carmen Helpers to perform the work of oiling and packing on the Waycross Georgia Train Yards and all other yards throughout the system who were not assigned to do oiling prior to August 1, 1960.

5. That at the hearing a perpetual injunction against the Defendant Railroad, its officers, agents and employees, and the Brotherhood, its officers, agents and members, be granted by order of this Court enjoining and restraining them and each of them from assigning and permitting Carmen and/or employees of any other craft except Carmen Helpers to perform the work of oiling and packing on the Waycross Yard and all other yards located on various other points throughout the system.

6. That the Defendant Brotherhood; its officers, agents and members be enjoined by order of this Court from requiring plaintiffs and the other members of Florida Lodge No. 690, to pay a per capa tax whatsoever to any other local lodge composed of only White members except that any tax or assessment legally imposed upon any other member of the Brotherhood be paid by plaintiffs and all other Colored members of the Brotherhood in the same amount and in the same regular channels as any other member of the Brotherhood.

7. That at the hearing a perpetual injunction against the Defendant Railroad, its officers, agents and employees and the Defendant Brotherhood, its officers, agents and members be granted by order of this Court enjoining and restraining them and each of them from assigning and permitting any Carmen or the employees of any other craft except the Carmen Helpers from performing the work of oiling and packing etc., and any other work contracted with the Defendant Railroad to be performed by Carmen Helpers under Rule 404 of the present contract effective September 15, 1943.

8. That the plaintiffs be awarded as damages their loss of wages and granted such further relief as may be proper.

ERNEST D. JACKSON, SR.,
(Ernest D. Jackson, Sr),
Attorney for Plaintiffs.

410 Broad Street, Suite # 208.
Jacksonville, Florida.

Verification.

I, George Britton, after being duly sworn upon my oath depose and say that I have read the complaint attached hereto and filed herein by plaintiffs' attorney, Ernest D. Jackson, Sr., Esq., and know the contents thereof; the same is true of my own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters, I believe it to be true.

GEORGE BRITTON.

Sworn to and subscribed before me this 6th day of October, A. D. 1960.

EARLENE WADE,

Notary Public, State of Florida at Large.

My Commission Expires Aug. 15, 1961.

Bonded by American Surety Co. of N. Y.

Verification.

I, Curtis Jackson, after being duly sworn upon my oath, depose and say that I have read the complaint attached hereto and filed herein by plaintiffs' attorney, Ernest D. Jackson, Sr., Esq., and know the contents thereof; the same is true of my own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters, I believe it to be true.

CURTIS JACKSON.

Sworn to and subscribed before me th this 6th day of October, A. D. 1960.

EARLENE WADE,

Notary Public, State of Florida at Large.

My Commission Expires Aug. 15, 1961.

Bonded by American Surety Co. of N. Y.

PLAINTIFF'S EXHIBIT "D".

Waycross, Georgia, August 17, 1960

Record: F. Cobb, Carmen
Mr. F. Cobb, Carmen
Waycross, Georgia

Our records do not indicate that you have passed the car inspector's examination to be qualified for car inspector. If these records are incorrect, please advise as to the date you have taken and passed the examination.

It is necessary that all upgraded apprentices immediately take steps to qualify as car inspectors if they are to remain in an upgraded status

It is necessary that younger carmen who are in a position of being assigned in accordance with Rule 12(e) must be qualified if they are to remain in service.

Inasmuch as it will be necessary for you to qualify within the next 30 days, please advise within five (5) days what your intentions are about qualifying as car inspector.

R. W. TONNING, JR.,
Shop Superintendent.

cc-Mr. E. L. Spicer
Mr. J. C. Foster
Mr. C. L. Parnaby
Mr. J. W. Hughes—Local Chairman—Carmen. cc-PR.

PLAINTIFF'S EXHIBIT "F".

Waycross, Georgia, August 4, 1960.

Bulletin No. 241.

Mechanical Department Employees—Carmen's Craft:

Effective close of shifts August 9, 1960, the following jobs will be abolished and re-assigned:

1 Car Inspector—1st Shift and 2nd Shift.
Work Week: Friday through Tuesday.
Rest Days: Wednesday and Thursday.
Hours of Service: 7:00 A.M. to 3:00 P.M.—Friday 3:00 P.M. to 11:00 P.M.—Saturday through Tuesday.
Assignment: Relief.
Occupant: W. V. Driggers.

1 Car Inspector—1st Shift and 2nd Shift.
Work Week: Friday through Tuesday.
Rest Days: Wednesday and Thursday.
Hours of Service: 3:00 P.M. to 11:00 P.M.—Friday through Sunday. 7:00 A.M. to 3:00 P.M.—Monday and Tuesday.
Assignment: Relief
Occupant: W. D. Gillis.
The above jobs will be re-assigned as follows:
1 Car Inspector—1st Shift.
Work Week: Thursday through Monday.
Rest Days: Tuesday and Wednesday.
Hours of Service: 7:00 A.M. to 3:00 P.M.
Assignment: Relief.
1 Car Inspector—3rd Shift.
Work Week: Thursday through Monday.
Rest Days: Tuesday and Wednesday.
Hours of Service: 11:00 P.M. to 7:00 A.M.
Assignment: Relief.
Bids close midnight, August 9, 1960.
Please let me have your bids as per rule.

E. L. SPICER,
Master Mechanic.

Post Bulletin Boards
Cy—Local Chairman

PLAINTIFF'S EXHIBIT "G"

Waycross, Georgia, August 5, 1960

Bulletin No. 259.
Mechanical Department Employees—Carmen's Craft:
Effective with close of shifts August 9th, 1960, the following force reduction will be made, Train Yard, Waycross, Georgia.

1 Car Oiler & Packer—1st Shift.
Work Week: Friday through Tuesday.
Hours of Service: 7:00 A.M. to 3:00 P.M.
Assignment; 7 Days.
Occupant: W. J. McLendon.
1 Car Oiler & Packer—1st Shift.
Work Week: Tuesday through Saturday.
Hours of Service: 7:00 A.M. to 3:00 P.M.
Assignment: 7 Days.

Occupant: J. C. Robinson.
2 Car Oilers & Packers—1st Shift.
Work Week: Wednesday through Sunday.
Hours of Service. 7:00 A.M. to 3:00 P.M.
Assignment: 7 Days.

Occupant: N. Cooper #1 and A. Scott.
1 Car Oiler & Packer—1st Shift.
Work Week: Thursday through Monday.
Hours of Service: 7:00 A.M. to 3:00 P.M.
Assignment: 7 Days.

Occupant: N. Cooper #2.
1 Car Oiler & Packer—1st Shift—Tuesday & Wednesday
2nd Shift—Thursday thru Saturday.
Work Week: Thursday through Monday.
Hours of Service: 7:00 A.M. to 3:00 P.M. and 3:00 P.M. to 11:00 PM
Assignment: Relief.

Occupant: J. M. Burkett.
2 Car Oilers & Packers—1st Shift.
Work Week: Monday through Friday.
Hours of Service: 7:00 A.M. to 3:00 P.M.
Assignment: 7 Days.

Occupant: J. Barnes & G. Britton.
1 Car Oiler & Packer—1st Shift.
Work Week: Saturday through Wednesday.
Hours of Service: 7:00 A.M. to 3:00 P.M.
Assignment: Relief.

Occupant: A. C. King.
1 Car Oiler & Packer—1st Shift.
Work Week: Saturday through Wednesday.
Hours of Service: 7:00 A.M. to 3:00 P.M.
Assignment: Relief.

Occupant: A. F. Swindle.
2 Car Oiler & Packer—2nd Shift.
Work Week: Friday through Tuesday.
Hours of Service: 3:00 P.M. to 11:00 P.M.
Assignment: 7 Days.

Occupant: G. Z. Stoneback.
1 Car Oiler & Packer—2nd Shift.

Work Week: Sunday through Thursday.

Hours of Service: 3:00 P.M. to 11:00 P.M.
Assignment: 7 Days.

Occupant: S. T. Streeter.
1 Car Oiler & Packer—2nd Shift.
Work Week: Wednesday through Sunday.
Hours of Service: 3:00 P.M. to 11:00 P.M.
Assignment: Relief.

Occupant: N. L. Davis.
2 Car Oilers & Packers—2nd Shift.
Work Week: Monday through Friday.
Hours of Service: 3:00 P.M. to 11:00 P.M.
Assignment: Regular.

Occupant: B. Corbett and G. Cobb.
1 Car Oiler & Packer—2nd Shift.
Work Week: Saturday through Wednesday.
Hours of Service: 3:00 P.M. to 11:00 P.M.
Assignment: 7 Days.

Occupant: J B. Geiger.
1 Car Oiler & Packer—2nd Shift.
Work Week: Tuesday through Saturday.
Hours of Service: 3:00 P.M. to 11:00 P.M.
Assignment: 7 Days.

Occupant: D. James
1 Car Oiler & Packer—2nd Shift.
Work Week: Sunday through Thursday.
Hours of Service: 3:00 P.M. to 11:00 P.M.
Assignment: 7 Days.

Occupant: E. Paulk.
1 Car Oiler & Packer—3rd Shift.
Work Week: Friday through Tuesday.
Hours of Service: 11:00 P.M. to 7:00 A.M.
Assignment: 7 Days.

Occupant: J. Rodes.
Car Oiler Packer—3rd Shift.
Work Week: Sunday through Thursday.

Hours of Service: 11:00 P.M. to 7:00 A.M.

Assignment: 7 Days.
Occupant: W. Rooks.
1 Car Oiler & Packer—3rd Shift.
Work Week: Thursday through Monday.
Hours of Service: 11:00 P.M. to 7:00 A.M.
Assignment: 7 Days.

Occupant: S. Gaines.
1 Car Oiler & Packer—3rd Shift.
Work Week: Wednesday through Sunday.
Hours of Service: 11:00 P. M. to 7:00 A.M.
Assignment: Relief.

Occupant: M. Spikes.
1 Car Oiler & Packer—2nd & 3rd Shift.
Work Week: Saturday through Tuesday—3rd Shift.
Friday—2nd shift.
Hours of Service: 11:00 P.M. to 7:00 A.M. and 3:00 P.M. to 11:00 P.M.
Assignment: Relief.

Occupant: E. D. Williams.
1 Car Oiler & Packer—3rd Shift.
Work Week: Tuesday through Saturday.
Hours of Service: 11:00 P.M. to 7:00 A.M.
Assignment: Relief.

Occupant: L. B. Moody.

The following men will be cut off by this reduction.

V. Carter.
A. E. (Illegible).
M. C. Coatwright.
Curtis Jackson.
T. E. (Illegible.) (Sick).
J. B. (Illegible).
M. McLendon.
H. L. Howell.
N. B. Crews.
P. Q. Todd (sick).

W. E. Barker.
Curtis Hall.
J. A. Thrift (Sick).
J. L. Smith.
J. M. Williams.
F. J. Mumford.
J. A. Griffin.
J. Young.
M. Kirkland.
C. G. Callahan.
O. G. Thrift.
R. Rozier.
I. R. Booth (Sick).
Post Bulletin Boards
J. Jackson.
R. L. Blalock.

E. L. SPICER,
Master Mechanic.

Cy—Local Chairman

PLAINTIFF'S EXHIBIT "H"

Waycross, Georgia, August 4, 1960.

Bulletin No. 240. Sheet No. 1

Mechanical Department Employees—Carmen's Craft:

Effective August 9, 1960, there will be an increase in force 18 Car Inspectors, Train Yard, Waycross, Ga., as follows: Successful bidders must be qualified Car Inspector and have passed all required examinations as such.

1 Car Inspector—1st Shift.
Work Week: Monday through Friday.
Rest Days: Saturday and Sunday.
Hours of Service: 7:00 to 3:00 P.M.

Assignment: Relief.
1 Car Inspector—1st Shift.
Work Week Friday through Tuesday.
Rest Days: Wednesday and Thursday.
Hours of Service: 7:00 A.M. to 3:00 P.M.

Assignment: 7 Days.
1 Car Inspector—1st Shift.
Work Week: Tuesday through Saturday.
Rest Days: Sunday and Monday.
Hours of Service: 7:00 A.M. to 3:00 P.M.
Assignment: 7 Days.

1 Car Inspector—1st Shift.
Work Week Thursday through Monday.
Rest Days: Tuesday and Wednesday.
Hours of Service: 7:00 A.M. to 3:00 P.M.
Assignment: 7 Days.
Work Week: Saturday through Wednesday.

1 Car Inspector—1st Shift.
Rest Days: Thursday and Friday.
Hours of Service: 7:00 A.M. to 3:00 P.M.
Assignment: 7 Days.

1 Car Inspector—1st Shift.
Work Week: Tuesday through Saturday.
Rest Days: Sunday and Monday.
Hours of Service: 7:00 A.M. to 3:00 P.M.
Assignment: Relief

1 Car Inspector—2nd Shift.
Work Week: Monday through Friday.
Rest Days: Saturday and Sunday.
Hours of Service: 3:00 P.M. to 11:00 P.M.
Assignment: 7 Days.

1 Car Inspector—2nd Shift.
Work Week: Friday through Tuesday.
Rest Days: Wednesday and Thursday.
Hours of Service: 3:00 P.M. to 11:00 P.M.
Assignment: 7 Days.

1 Car Inspector—2nd Shift.
Work Week: Wednesday through Sunday.
Rest Days: Monday and Tuesday.
Hours of Service: 3:00 P.M. to 11:00 P.M.
Assignment: 7 Days.

2 Car Inspectors—2nd Shift.
Work Week: Saturday through Wednesday.
Rest Days: Thursday and Friday
Hours of Service: 3:00 P.M. to 11:00 P.M.
Assignment: 7 Days.

1 Car Inspector—2nd Shift.
Work Week: Thursday through Monday.
Rest Days: Tuesday and Wednesday.
Hours of Service: 3:00 P.M. to 11:00 P.M.
Assignment: Relief.

1 Car Inspector—2nd Shift.
Work Week: Monday through Friday.
Rest Days: Saturday and Sunday.
Hours of Service: 3:00 P.M. to 11:00 P.M.
Assignment: Relief.

1 Car Inspector—2nd Shift.
Work Week: Wednesday through Sunday.
Rest Days: Monday and Tuesday.
Hours of Service: 3:00 P.M. to 11:00 P.M.
Assignment: 7 Days.

1 Car Inspector—3rd Shift.
Work Week: Monday through Friday.
Rest Days: Saturday and Sunday.
Hours of Service: 11:00 P.M. to 7:00 A.M.
Assignment 7 Days.

1 Car Inspector—3rd Shift.
Work Week: Thursday through Monday.
Rest Days: Tuesday and Wednesday.
Hours of Service: 11:00 P.M. to 7:00 A.M.
Assignment: Relief.

1 Car Inspector—3rd Shift
Work Week: Sunday through Thursday.
Rest Days: Friday and Saturday.
Hours of Service: 11:00 P.M. to 7:00 A.M.
Assignment: 7 Days.
1 Car Inspector—3rd Shift.

Work Week: Tuesday through Saturday.
Rest Days: Sunday and Monday.
Hours of Service: 11:00 P.M. to 7:00 A.M.
Assignment: 7 Days.
Please let me have your bids as per rule. Bids close midnight August 8, 1960.

E. L. SPICER,
Master Mechanic.

CY—Local Chairman.

MOTION.

Filed Nov. 3, 1960.

(Title Omited.)

The Defendant, Atlantic Coast Line Railroad Company, a corporation, by its undersigned attorneys, moves the Court to dismiss the above styled cause against Defendant, Atlantic Coast Line Railroad Company, on the following grounds:

1. Lack of jurisdiction.
2. Amount in conttoversy does not exceed $10,000.00 exclusive of interest and cost.
3. The Complaint fails tc state a claim upon which relief can be granted.

KURZ, TOOLE & MARTIN,
By CLARK W. TOOLE, JR.,
Attorneys for Defendant,
Atlantic Coast Line Railroad

704 Florida Theatre Building,
Jacksonville 2, Florida.

MOTION TO DISMISS.

Filed Nov. 16, 1960.

(Title Omitted.)

Defendant Brotherhood of Railway Carmen of America moves the Court to dismiss the Complaint filed by Plaintiffs in this cause upon the following grounds, individually and collectively:

1. The Complaint fails to state a claim for relief against this Defendant.

2. The Court lacks jurisdiction of the subject matter, exclusive jurisdiction of the dispute described in the Complaint being vested in the National Railroad Adjustment Board under the provisions of Section 3 First (i) of the Railway Labor Act (48 Stat. 1191, 45 U.S.C., Sec. 153 First (ii).

3. Although the Complaint states as a bare conclusion that Plaintiffs have no adequate union, administrative or other non-judicial remedy, the Complaint fails to allege that the remedies afforded to the Plaintiffs within the union and under the Railway Labor Act have been exhausted.

Motion to Strike.

Subject to the foregoing Motion to Dismiss, Defendant Brotherhood of Railway Carmen of America moves the Court under Rule 12(f), Federal Rules of Civil Procedure, to strike from the Complaint filed in this cause:

1. All of paragraphs VI, X and XI upon the ground that the matters set forth therein relate solely to the internal organization of the Defendant Brotherhood and are irrelevant and immaterial to the alleged claim for relief contained in the Complaint.

2. All of paragraph VIII(f) upon the ground that it is irrelevant and immaterial to the alleged cause of action set forth in the Complaint.

MULHOLLAND, ROBIE & HICKIE,
740 National Bank Building,
Toledo 4, Ohio.

BOTTS, MAHONEY, WHITEHEAD, RAMSAUR & HADLOW,
By W. HADLOW, JR.,
Attorneys for Defendant,
Brotherhood of Railway Carmen of America.
1712 Barnett National Bank Building,
Jacksonville 2, Florida.

MOTION FOR MORE DEFINITE STATEMENT AND TO STRIKE

Filed Nov. 30, 1960.
(Title Omitted.)

The Defendant, Atlantic Coast Line Railroad Company, a corporation, by its undersigned attorneys moves the Court as follows:

I.

Motion for more definite statement upon the ground that the Defendant cannot be reasonably required to frame an answer thereto in that the complaint fails to clearly allege whether or not there is a class action maintainable under Rule 23(a) Federal Rules of Civil Procedure which said information is within the possession of the Plaintiffs and unknown to this Defendant.

II.

To strike paragraph No. 8 from the said complaint as improper in an action of this nature.

KURZ, TOOLE & MARTIN,
By CLARK W. TOOLE, JR.
Attorneys for Defendant, Atlantic Coast Line Railroad Company.

704 Florida Theatre Bldg.,
Jacksonville, Florida.

ORDER DISMISSING COMPLAINT AND DISMISSING ACTION

Filed Aug. 9, 1961.
(Title Omitted.)

All affected parties, by their counsel, having been heard after due notice, upon the matters herein disposed of, it is, upon consideration, Ordered and Adjudged:

1. The Motion of the defendant, Atlantic Coast Line Railroad Company, a corporation, (filed November 3, 1960) to

dismiss the Complaint herein, is granted, upon the 1st ground therof, lack of jurisdiction of the subject matter. (Said defendant's additional Motion, filed November 30, 1960, addressed to the Complaint herein, for more definite statement, and to strike, is not passed upon.)

2. The Motion of the defendant, Brotherhood of Railway Carmen of America (filed November 16, 1960) is granted upon the 2nd ground thereof, lack of jurisdiction of the subject matter, and upon the 3rd ground thereof, failure to exhaust union remedies and failure to exhaust remedies under the Railway Labor Act.

3. Since exclusive jurisdiction of the dispute described in the Complaint is vested in the National Railroad Adjustment Board, involving as it does a dispute growing out of the interpretation or application of agreements concerning "rates of pay, rules or working conditions" (Section 3 First (i) of the Railway Labor Act (45 U.S.C. Sec. 153- First (ii), 48 Stat. 1191), leave to amend the Complaint is not granted; rather, this action is dismissed for lack of jurisdiction of the subject matter in this Court. (See Fingar v. S.A.L. Railroad Co., C.A.5, 1960, 277 Fed. 2d 698; Gainey v. Brotherhood of Railway and Steamship Clerks, etc., D. C. E. D. Pa. 1959, 177 F. Supp. 421; Rose v. Great Norther nRailway Co., C.A. 8, 1959, 268 Fed. 2d 671; Brock v Brotherhood of Sleeping Car Porters, etc., D. C. W. D. La. 1955, 1229 F. Supp. 849; Slocum v. Delaware, L & W. R. Co., 1950, 339 U.S. 239, 70 S. Ct. 577, 94 L Ed. 795).

Done and Ordered at Jacksonville, Florida, within said District, this August 9, 1961.

BRYAN SIMPSON,
Chief Judge, Southern District
of Florida.

Ernest D Jackson, Sr., Esquire,
410 Broad Street,
Jacksonville 2, Florida.

Messrs. Kurz, Tolle & Martin,
704 Florida Theatre Building,
Jacksonville 2, Florida.

Messrs. Botts, Mahoney, WhiteheadRamsaur & Hadlow,
1712 Barnett National Bank Building,
Jacksonville 2, Florida.
Messrs. Mulholland, Robie & Hickke,
704 National Bank Building,
Toledo 4, Ohio.

POINTS TO BE RELIED UPON ON APPEAL.

Filed Sep. 15, 1961.

(Title Omitted.)

1. Whether or not the abolishing of jobs held by Negro Carmen-Helpers for a period of fifty (50) years or more and the transfer of the same jobs to be performed by white carmen inspectors is a denial of the Negro Carmen-Helpers' right in violation of the Railway Labor Act and subject to a determination by the United States District Court.

2. Whether or not a United States District Court has jurisdiction to determine the rights of Negro Carmen-helpers in connection with work they had performed for over fifty (50) years where the same work was transfered to be performed by white carmen inspectors who did not perform such work prior to the said transfer and where said Carmen-helpers were on a separate seniority roster from that of the car inspector's job during this period of time.

3. Whether or not Railroad Carmen-helpers who had been repuired to join a segregated local and who over a period of years have demanded the National Union to permit them to serve as apprentices for various jobs including the job of carmen and had been denied this privilege by the National Union and where History further shows that the carmen unions have consistently argued that the carmen do all the jobs performed by the carmen-helpers and where the union permitted white members of the carmen-craft to perform jobs that have been taken from the Negro carmen-helpers, over their protest, would be repuired to exhaust "so called administrative remedies within the union or under the Railway Labor Act before bringing action in the United States District Court against said union.

ERNEST D. JACKSON, SR.
(Ernets D. Jackson, Sr.)
Attorney for Plaintiffs

110 Broad Street, Suite 208
Jacksonville, Florida

DIRECTION TO THE CLERK

Filed Sept. 11, 1961

(Title Omitted)

The clerk of the above entitled Court will please prepare and certify the following proceedings filed in the above styled cause to be transmitted to the United States Court of Appeals for the Fifth Circuit.

(1) Copy of Complaint filed by Plaintiffs.

(2) All exhibits introduced into evidence by both Plaintiffs and Defendants.

(3) Notice of Appeal filed herein.

(4) Copy of Directions to the Clerk.

(5) Copy of Points To Be Relied Upon On Appeal.

(6) Copy of Motion to Dismiss and Motion to Strike.

(7) Copy of Motion for more definite statement to strike. strike.

(8) Copy of Motion.

(9) Copy of Order dismissing complaint and dismissing action.

ERNEST D. JACKSON, SR.
(Ernest D. Jackson, Sr.)
Attorney For Plaintiff

410 Broad Street, Suite 208,
Jacksonville, Florida

FILED
APR 9 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 964

A. C. KING, ET AL.,

Petitioners,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY, ET AL.,

Respondents.

On Petition for Writ of Certiorari To
The United States Court of Appeals
For The Fifth Circuit

BRIEF IN OPPOSITION FOR RESPONDENT THE GRAND LODGE BROTHERHOOD RAILWAY CARMEN OF AMERICA.

Of Counsel:
Mahoney, Hadlow,
Chambers and Adams
Barnett National
Bank Bldg.
P. O. Box 4099
Jacksonville 1, Florida

Malholland, Hickey,
& Lyman
741 National Bank Bldg
Toledo, Ohio 43604

William H. Adams, III
Barnett National Bank Bldg.
P. O. Box 4099
Jacksonville 1, Florida

Richard R. Lyman,
741 National Bank Building
Toledo, Ohio 43604

Attorneys for Respondent The
Grand Lodge Brotherhood
Railway Carmen of America.

THE TOLEDO PRINTING CO.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 904

A. C. KING, ET AL.,

Petitioners,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY, ET AL.,

Respondents.

On Petition for Writ of Certiorari To The United States Court of Appeals For The Fifth Circuit

BRIEF IN OPPOSITION FOR RESPONDENT THE GRAND LODGE BROTHERHOOD RAILWAY CARMEN OF AMERICA.

QUESTION PRESENTED

Did the District Court below have jurisdiction of an action by railroad employees against their employer carrier and their collective bargaining representative for alleged breach of the applicable bargaining agreement, where the only relief sought was specific enforcement of the agreement; the only action complained of was the carrier's unilateral transfer of certain work from plaintiffs to employees in a different category; and the only charge of "discrimination" by the bargaining representative — that of "acquiescence" in the transfer — was clearly refuted on summary judgment by evidence which was neither contradicted by plaintiffs, nor countered by affidavit, or any other evidence submitted on their part.

STATEMENT OF THE CASE

The description of this action in the present petition is so at odds with the record herein that a brief restatement of the facts is essential to put the case in its proper perspective.

The action involves an attempt by a group of carmen helpers to obtain, by judicial decree, exclusive rights to the performance of certain work described as "car oiling and box packing" allegedly guaranteed to them by agreement between their railroad employer and the collective bargaining representative for the craft or class of which they are members, but claimed to have been improperly taken away from them and assigned to other members of the same craft or class known as carmen. The suit was brought against respondent Atlantic Coast Line Railroad Company, petitioners' employer, and respondent The Grand Lodge Brotherhood Railway Carmen of America, their bargaining representative.

In asserting exclusive rights to the car oiling and box packing work, petitioners specifically relied on Rule 404 of the current agreement between the Railroad and the Brotherhood, which includes that work in describing the duties of carmen helpers. (Ap. 11a.)[1] The principal relief sought in the action is specific enforcement of Rule 404. (Ap. 16a - 17a.)

Although it is alleged that "Both defendants are guilty of engaging in hostile discrimination against the plaintiffs", that allegation is followed only by a description of the *Railroad's* action in posting bulletins the effect of which was to transfer the work in question from carmen helpers to carmen. (Ap. 12a - 13a.) There was no allegation of any joint action taken by the Railroad and the Brotherhood.

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1 Reference is to Appendix to Petition for Writ of Certiorari.

It was not claimed that the Brotherhood was consulted in any way, or, that its concurrence in the work transfer was sought or obtained. There was no allegation of any conspiracy between the Railroad and the Brotherhood. There was no allegation that the transfer had any different impact on Negro than on white carmen helpers.[2]

Although petitioners charged the Brotherhood with "discrimination" and "breach of the fiduciary duty" imposed on it by the Railway Labor Act, with respect to the employees it represents, the only support for such charges consisted of allegations that the work transfer was "permitted" and "acquiesced in" by the Brotherhood. (Ap. 13a - 15a.) In connection with those conclusions, the only factual allegations were that petitioners requested the Brotherhood's local grievance representative to protest the transfer; that the protest was rejected by the Railroad's Master Mechanic on the grounds that Rule 404 "does not give oilers and packers exclusive rights to this work"; that on August 17, 1960 (less than two months prior to the filing of the original complaint herein), the Local Chairman turned the matter over to the Brotherhood's General Chairman; and that "more than thirty (30) days have passed" since this matter was presented to the company and as of this date, the matter has not been settled." (Ap. 13a - 14a.) Although it was charged that the General Chairman had stated his opinion that "there is nothing that can be done about this situation", there was no allegation that he refused to process petitioners' grievance, that he was not in fact continuing to process it at the time this action was filed, or that he did not handle it in good faith and in accordance with the established grievance machinery.

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2 Petitioners purported to sue on behalf of themselves and all other carmen helpers; and while it was alleged that most of the petitioners were Negroes, it also appeared from the original complaint (Ap. 53a) and the amended complaint (Ap. 8a, 11a-12a) that there are white employees in the carmen helper category, as well as Negro employees in the category of carmen to which the work in dispute was assigned by the railroad.

3 Prior to the filing of the original complaint. See Ap. 59a.

Petitioners' original complaint (Ap. 51a) was dismissed by the District Court on the ground that the dispute was one growing out of the interpretation or application of agreements, and hence within the exclusive jurisdiction of the National Railroad Adjustment Board under the doctrine of this Court's decision in *Slocum v. Delaware, L. & W. R. Co.*, 339 U.S. 239. (Ap. 74a - 75a.) In *Britton v. Atlantic Coast Line Railroad Company*, 303 F. (2d) 274, this ruling was affirmed by the Court of Appeals below on the ground that it was permissible for the District Court to conclude that, "reading the detailed allegations of the complaint together with annexed exhibits, it was clear that, in contrast to general conclusory allegations of discriminatory unfair representation and practices, this was really a suit on, and a controversy over, the interpretation of the collective bargaining agreement." (Ap. 3a - 4a.)

Feeling, however, that the District Court should not have expressly denied leave to amend the complaint, and expressing concern lest an outright affirmance of the dismissal of the original complaint foreclose plaintiffs, by the principle of res judicata or otherwise, from further litigation of any claim they might be able to assert by proper pleading of some unlawful discrimination, as contrasted with the contract enforcement action, the Court of Appeals remanded the case so that appellants might be afforded leave to amend the complaint to assert any cause of action based on the discrimination theory. (Ap. 4a.)

Following remand petitioners filed an amended complaint (Ap. 7a) which was substantially unchanged from the original, contained no new or different allegations of fact, and sought precisely the same relief — specific enforcement of petitioners' alleged rights under Rule 404 of the collective bargaining agreement.

Thereafter the Railroad filed its motion to dismiss the amended complaint (Ap. 21a), and the Brotherhood moved in the alternative to dismiss or for summary judgment (Ap. 21a), attaching to such alternative motion an officially certified copy of proceedings before the National Roalroad Adjustment Board, Second Division, in its then pending Docket No. 3860 (Ap. 23a - 42a), showing that contrary to petitioners' allegations that the Brotherhood had acquiesced in the action of the Railroad (the *only* "discrimination" charged against the Brotherhood), it had in fact processed a claim on behalf of similarly situated employees, including a number of the petitioners, through the contractual grievance machinery on the property of the Railroad and to said Second Division, where, following a deadlock between the carrier and labor members of the Division, the claim was awaiting decision by a neutral referee.[4] No counter affidavit or other evidence was offered by petitioners in opposition to said alternative motion.

The District Court granted summary judgment on the ground that since no evidence had been adduced raising a genuine issue of hostile discrimination, the matter lay within the exclusive jurisdiction of the Adjustment Board, saying:

> ". . . it appears to the Court that the Defendant Union has not acquiesced in the the actions of the Defendant Railroad complained of in the amended complaint, but on the contrary the Defendant Union has actively processed a grievance on behalf of some of the plaintiffs and other employees similarly situated through the grievance machinery existing under the controlling agreement between the Defendant Union and the Defendant Railroad. In that grievance it has attacked the very actions of the Defendant Railroad

4 The referee's decision (subsequent to the judgment of the District Court and hence not a part of the record herein) denying the claim on its merits, noted at pages 9-11 of the petition herein, in no way alters the fact that the Brotherhood opposed, rather than acquiesced in, the Railroad's action.

complained of in the amended complaint. . . . No counter-affidavit or other evidence has been submitted by the Plaintiffs from which it could be inferred that the Defendant Union has not prosecuted the grievance in good faith or that it has unfairly represented the Plaintiffs in the matters which they complain of. . . ." (Ap. 5a.)

The judgment of the District Court was affirmed by the Court of Appeals below, with the observation that "we see no difference between the factual situation under the original complaint and that which is before us on this appeal. . . ." (323 F. (2d) 1005; Ap. la.)

ARGUMENT

Nothing in the record herein or the arguments of petitioners warrants a review of the decision below by this Court.

Contrary to petitioners' assertions, under the heading "Reasons for Granting the Writ", the decision below presents no conflict with decisions of this Court or other Court of Appeals decisions.

As was noted by the court below in its opinion in connection with the original complaint herein (*Britton v. Atlantic Coast Line Railroad Company*, 303 F. (2d) 274), there has been no real dispute among the parties as to the legal principles controlling this litigation. In a dispute over the interpretation and application of a railroad collective bargaining agreement, where the claimant seeks to enforce rights under the agreement, the matter lies within the exclusive jurisdiction of the National Railroad Adjustment Board. *Slocum v. Delaware, L. & W. R. Co.*, 339 U.S. 239. On the other hand, the courts admittedly possess jurisdiction to remedy hostile or invidious discrimination by a

bargaining agent in violation of its fiduciary duty towards members of the craft it represents. *Steele v. Louisville & Nashville R. Co.*, 323 U.S. 192. The present case clearly falls within the former rather than the latter category, both on the basis of the allegations of the amended complaint, and on the unrefuted showing, on summary judgment, that the respondent Brotherhood supported and actively processed petitioners' grievances rather than opposing them.

The nature of the action must of course be determined on the basis of the pleadings and evidence before the courts below, rather than the description of it in arguments contained in the present petition. Here it is clear that the present action relies on, rather than challenges, the agreement between the Railroad and the Brotherhood; and in spite of petitioners' transparent attempt, in paragraph VII of the amended complaint (Ap. 9a), to evade the jurisdictional obstacle by the claim that they "are not asking or seeking this Court's interpretation of any contract", the prayer of the amended complaint seeks specific enforcement of Rule 404 of the present agreement between the Railroad and the Brotherhood. In none of the "discrimination" cases relied on by petitioners was the action entertained for purposes of specific enforcement of a collective bargaining agreement.

While it is thus apparent that the amended complaint failed to remedy the lack of jurisdiction which resulted in dismissal of the original complaint, summary judgment was properly based on the additional ground that the undisputed evidence before the District Court clearly refuted petitioners' charge that the Brotherhood had permitted or acquiesced in the Railroad's action. The apparent contention of petitioners that the District Court could not properly determine the issue of subject-matter jurisdiction in the light of undisputed facts adduced on the summary judgment

motion (Petition, p. 7 - 8) is so frivolous as to require no argument. There being no genuine issue of actionable discrimination, all that was left was a contract enforcement action, a cause clearly within the exclusive jurisdiction of the Adjustment Board.

CONCLUSION

For the foregoing reasons, it is clear that the application of controlling legal principles by the courts below, and the dismissal of the action for want of jurisdiction, were in complete conformity with the decisions of this Court. It is accordingly submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

William H. Adams, III
Barnett National Bank Bldg.
P. O. Box 4099
Jacksonville 1, Florida

Richard R. Lyman
741 National Bank Building
Toledo, Ohio 43604

Attorneys for Respondent The Grand Lodge Brotherhood Railway Carmen of America.

Of Counsel:

Mahoney, Hadlow, Chambers and Adams
Barnett National Bank Bldg.
P. O. Box 4099
Jacksonville 1, Florida

Mulholland, Hickey & Lyman
741 National Bank Bldg.
Toledo, Ohio 43604

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief for Respondent, The Grand Lodge Brotherhood Railway Carmen of America, has been furnished to William H. Maness, 704 Florida Theatre Building, Jacksonville 2, Florida; Ernest D. Jackson, Sr., 410 Broad Street, Suite #208, Jacksonville, Florida and Releford McGrief, 411 Broad Street, Jacksonville, Florida, Attorneys for Petitioners, by United States Air Mail, this 7th day of April, 1964.

.....

Richard R. Lyman
741 National Bank Building
Toledo, Ohio 43604

Attorney for Respondent The
Grand Lodge Brotherhood Railway
Carmen of America

Office-Supreme Court, U.S.
FILED
MAY 8 1964

In the
Supreme Court of the United States

OCTOBER TERM, 1963

No. 904

A. C. KING, ET AL.,

Petitioners,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY, ET AL.,

Respondents.

On Petition for Writ of Certiorari To The United States Court of Appeals For The Fifth Circuit

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BRIEF IN OPPOSITION FOR RESPONDENT ATLANTIC COAST LINE RAILROAD COMPANY

William H. Maness
Attorney for Respondent,
Atlantic Coast Line Railroad Company
704 Florida Theatre Building
Jacksonville 2, Florida

Kurz, Toole, Maness & Martin
Of Counsel

In the
Supreme Court of the United States

OCTOBER TERM, 1963

No. 904

A. C. KING, ET AL.,

Petitioners,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY, ET AL.,

Respondents.

On Petition for Writ of Certiorari To The United States Court of Appeals For The Fifth Circuit

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BRIEF IN OPPOSITION FOR RESPONDENT ATLANTIC COAST LINE RAILROAD COMPANY

Respondent, Atlantic Coast Line Railroad Company, endorses and adopts the brief in opposition heretofore filed herein by Respondent, THE GRAND LODGE BROTHERHOOD RAILWAY CARMEN OF AMERICA.

William H. Maness
Attorney for Respondent,
Atlantic Coast Line Railroad Company
704 Florida Theatre Building
Jacksonville 2, Florida

Kurz, Toole, Maness & Martin
Of Counsel.

CERTIFICATE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to the following counsel of record: ERNEST D. JACKSON, SR., 410 Broad Street, Suite #208, Jacksonville, Florida; RELEFORD McGRIFF, 411 Broad Street, Jacksonville, Florida; WILLIAM H. ADAMS, III, Barnett National Bank Building, P. O. Box 4099, Jacksonville 1, Florida, and RICHARD R. LYMAN, 741 National Bank Building, Toledo, Ohio, by mail, this ..... day of May, 1964.

.....

Attorney